THE JUDICIAL BRANCH AND THE EFFICIENT ADMINISTRATION OF JUSTICE

HEARING

BEFORE THE

SUBCOMMITTEE ON
COURTS, INTELLECTUAL PROPERTY,
AND THE INTERNET

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

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JULY 6, 2016

THE JUDICIAL BRANCH AND THE EFFICIENT ADMINISTRATION OF JUSTICE

WEDNESDAY, JULY 6, 2016

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, AND THE INTERNET

COMMITTEE ON THE JUDICIARY

Washington, DC.

The Subcommittee met, pursuant to call, at 10 a.m., in Room 2237, Rayburn House Office Building, the Honorable Darrell E. Issa, (Chairman of the Subcommittee) presiding.

Present: Representatives Issa, Goodlatte, Chabot, Franks, Jordan, Cohen, and Johnson.

Staff Present: (Majority) Joe Keeley, Chief Counsel; Eric Bagwell, Clerk; and (Minority) Jason Everett, Minority Counsel.

Mr. ISSA. The Committee will come to order. Members will be continuing to come in, and the Ranking Member, and the full Committee Chairman and Ranking Member—when they arrive—will make their opening statements, but we will not interrupt testimony.

Today we are here for the Subcommittee on Courts, Intellectual Property, and the Internet; and, without objection, the Committee Chair will be authorized to declare recesses of the Subcommittee at any time.

We welcome today's hearing on the judicial branch and the effective administration of justice. Today's hearing is about ensuring the proper oversight measures exist in our court system, and that justice is administered fairly by those who live up to the ethical standards required of our judges.

Respect for our government seems to be at an all-time low. Various scandals at executive branch agencies seem to be on a rise, on a regular basis. A Member of Congress from Philadelphia was recently convicted on 23 counts of fraud and racketeering before resigning just 2 weeks ago. It is absolutely critical that the judicial branch be an honest broker when called upon. However, the judicial branch is the least well known branch, and many say, the smallest, although its power, when addressed, is considerable.

It also has historically lacked transparency. It is time, however, for the judicial branch to come from the shadows. Americans expect an open and transparent government. Americans expect disclosures

of potential conflicts of interest, along with financial disclosures. Their expectation, rightfully so, belongs to three branches.

Finally, they expect to see their government officials doing their job. While C-SPAN may not be everyone's favorite channel today, it is an important part of making government accessibility to its citizens. There are cameras in this hearing room today, and citizens can judge for themselves whether or not elected officials are doing what they were sent to Washington to do. And, I might note that today's hearing will be archived and available immediately and for years to come.

Depending upon their offices, elected officials face the voters every 2, 4, or 6 years. Federal judges, Article III Federal judges, have a lifetime appointment, while other Federal judges have long-term appointments. That was set by the U.S. Constitution, and we respect that, with the absence of term limits, the court is, in fact, a permanent body; once confirmed, unaccountable, except in the case of high crimes and misdemeanors.

Judicial transparency is also lacking elsewhere. For example, the court system has no inspector general or, in other words, no watchdog of the judiciary. There are only a few cameras in a few courtrooms on a test basis, and the cameras in the courtroom are controversial and rare. In the Northern District of California, involving the NSA data collection, cameras were permitted, and I would like to take this opportunity to show just a little bit of what was voluntarily captured, if I may.

[Video shown.]

Mr. ISSA. Could you pause it right there, please? Thank you. Oops. Okay, perhaps no pause button. If we can figure out ways to consistently broadcast, capture, and retain this type of information that you saw in the case of what was, in fact, a case involving a sensitive national security issue, without jeopardizing secrets, then I believe that we can find a similar way for the purposes of archiving and, when appropriate, capturing evidentiary events in the courtroom. And, I want to be very brief, but there are a couple of areas that people often forget.

Although we capture a transcript and, in many cases, an audible recording, and have for years, one cannot necessarily capture a pointing at a document, or a misrepresentation that may, in some way, be captured by a video.

Additionally, any disturbance within the courtroom, it cannot be effectively captured by a transcribed interview. But, in fact, a video can capture misconduct. This could lead, in the case of disturbances and/or some action of a person, to have facial identification. These are all sensible reasons, over and above the basic question of, would the American people feel more comfortable if they could sit in their own home and watch exactly what the jury is watching, and what the limited amount of people in the audience are able to watch in any case, at any time, before the Federal court? Just like the THOMAS and PACER System is fundamental to making the court transparent, Americans believe that paying 10 cents a page for those documents is not, in fact, giving them the transparent access.

So, lastly, as I close, one of the important parts of a video capture would be that they would receive, in real time and by recorded

means, the ability to capture any and all information that was presented to the jury, without having to pay for it. As I said earlier, I will recognize the Ranking Member when he arrives but, at this point, we will go on to introducing our witness.

Today I want to thank our distinguished witness for taking time out of his busy schedule to be with us. The witness statements will be placed in the record in the entirety, and you know how the lights work, because you have done this before, and additionally—this is the opposite order I am used to.

I want to introduce our witness, Mr. James Duff, Director of the Administrative Office of the United States Courts; in other words, the man who spends about $13 billion in various ways on our behalf, and, pursuant to the rules of the Committee.

Mr. Duff, would you please rise to take the oath, and raise your right hand? You know this from other parts of government. Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Please be seated. Let the record indicate that Mr. Duff answered in the affirmative. Again, you are the only witness. You are the person most knowledgeable of the spending and who, as a matter of your job, works closely with the justices of the Supreme Court and the other administrative judges around the country. So, I am not going to limit you in your opening statement strictly to the 5 minutes, but as close as possible.

And, with that, I will recognize the Chairman of the full Committee for his opening statement, Mr. Goodlatte.

Mr. GOODLATTE. Thank you very much, Mr. Chairman, and I appreciate your holding this hearing. America, as a Nation of laws; with laws, come disputes and differences of opinion. The American people look to our Nation's courts to be efficient, transparent, and fair arbiters for settling disputes when they arise. To achieve these expectations, the judiciary must efficiently administer justice, despite the fact that the judiciary receives only a small portion of our Nation's budget.

As this Committee has seen previously in the disastrous GSA renovation of the Poff Courthouse in my hometown of Roanoke, and in other wasteful GSA expenditures, not all spending on judicial needs is directly within the judiciary's control.

However, it is healthy for Congress, which has responsibility for authorizing funding for the judiciary, to review spending by the judiciary, and have an opportunity to ask questions, to assess the efficiency of that spending.

In addition to efficiency, the American people expect transparency with respect to judicial actions. Transparency bolsters American's trust in fair and independent judges who are above ethical reproach.

The PACER system helps to deliver transparency, and has enabled anyone with an internet connection to read court filings and decisions, much like THOMAS, the legislative search tool allows the public to see what Members of Congress do on their behalf.

However, THOMAS, unlike PACER, comes with no direct fee. To be sure, there is a budgetary cost to operating both THOMAS and PACER, but in today's interconnected world, Americans increas-

ingly demand access to information, including court documents, freely and without a direct surcharge.

Another possible way to deliver transparency is to allow Americans to watch court proceedings. Our hearing today is being webcast to anyone who wants to watch it, but hearings only a few blocks away at the District Court for the District of Columbia and at the United States Supreme Court will never be seen by anyone. The idea of allowing cameras in our Nation's courtrooms is not a new one, but I look forward to hearing more about this issue today.

In addition to the efficient and transparent administration of justice, the American people look to the judicial branch to be the fair arbiter of disputes that arise in civil and criminal contexts, and expect impartial and ethical judges.

While the vast majority of Federal judges exercise their duties with the highest moral and ethical standards, regretfully, there have been recent situations in which Federal judges have fallen short of these standards.

For example, one judge in Alabama abused his wife and then lied about it to his colleagues before he resigned under pressure. Another judge appears to have engaged in deplorable conduct before he became a Federal judge, only to resign on disability days, days after widespread news reports appeared about his conduct.

To investigate ethical breaches like these, as well as, to ensure that instances of fraud and waste are discovered and addressed, former Judiciary Committee Chairman Sensenbrenner and current Senate Judiciary Chairman Grassley have supported the creation of an inspector general for the judiciary.

While the judiciary has strongly resisted the creation of such an inspector general, I look forward to exploring this idea further, as well. I look forward to hearing from our witnesses today about these and other issues concerning the operation of the judiciary, and, Mr. Chairman, I thank you for your forbearance and yield back.

Mr. ISSA. Thank you, Mr. Chairman, and I want to take a moment to thank you for the work that you have done in guiding the areas of reform that you are looking forward in the court system. I serve at your pleasure, but I also serve at your guidance. So thank you. And, Mr. Duff, with no further ado, please, you are recognized.

TESTIMONY OF JAMES C. DUFF, DIRECTOR, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Mr. DUFF. Thank you very much, Chairman Issa, and Ranking Member Nadler, who is due to arrive, and Members of the Subcommittee, and I appreciate very much Chairman Goodlatte's invitation to appear before you, and I am grateful for the opportunity to discuss the judicial branch and our goals and efforts to provide the most efficient and effective administration of justice in the world.

We regret that Judge Rodney Sippel, who was to appear here today too, could not be present because of a death in his family, and our thoughts are with Judge Sippel this morning as we testify here before your Committee. We ask that his written statement be included in the record.

Mr. ISSA. Without objection, so ordered.
[The information referred to follows:]

STATEMENT OF CHIEF JUDGE RODNEY W. SIPPEL

U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

BEFORE THE SUBCOMMITTEE ON
COURTS, INTELLECTUAL PROPERTY, AND THE INTERNET
OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES HOUSE OF REPRESENTATIVES

"THE JUDICIAL BRANCH AND THE EFFICIENT ADMINISTRATION OF JUSTICE"

June 23, 2016

Statement of Chief Judge Rodney W. Sippel

U.S. District Court for the Eastern District of Missouri

Before the Subcommittee on Courts, Intellectual Property, and the Internet

June 23, 2016

Chairman Issa, Ranking Member Nadler, and members of the subcommittee, thank you for inviting me to testify on the Judicial Branch and the Efficient Administration of Justice. On behalf of the Judicial Conference of the United States and as Chair of the Committee on the Judicial Branch, I am here today to talk about the judiciary's relationship with the other branches of government, and some of its efforts to enhance public understanding, trust and confidence in the federal judiciary, issues of great importance to the judiciary and the public we serve.

Let me start by explaining, to those who may not know, the structure of the Judicial Conference and my role within that structure.

The Judicial Conference of the United States (Conference), which was originally named the Conference of Senior Circuit Judges, was established in 1922 and was created, in part, to improve the efficient administration of justice in our federal courts. The body, which was renamed the Judicial Conference of the United States in 1948, makes policy for the administration of the United States courts (except for the Supreme Court of the United States). The Chief Justice of the United States is the presiding officer of the Conference. The Judicial Conference's members include the chief judge of each judicial circuit, the chief judge of the Court of International Trade, and a district judge from each regional judicial circuit. My fellow witness, Jim Duff, is not only the Director of the Administrative Office, by statute he also serves as the Secretary to the Conference.

Similar to the Congress, the Conference operates through a network of committees created to address and advise the Conference on a wide variety of subjects. The committees review issues within their jurisdiction and develop policy recommendations for consideration by the Conference. Sometimes recommendations are made to take positions or provide comments on legislative proposals; other times the recommendations are solely related to the administration of the federal courts.

I chair the Committee on the Judicial Branch (Branch Committee) which, as part of its mandate, addresses problems affecting the judiciary's efficient administration of justice. My committee is also responsible for the enhancement and maintenance of the relationships between the judiciary and the Congress, the Executive Branch, the media, the bar and the general public. It is that part of the Branch Committee's purview that I would like to address today.

The Judiciary's Relationships with Other Branches of Government

The judiciary has a longstanding interest in developing and maintaining relations with the executive and legislative branches of government. The Constitution established three coequal branches of government as integral to keeping our democracy healthy and vital to preserving the rule of law. The judiciary has numerous ways in which it develops and attempts to strengthen its relationship with the Congress and the Executive Branch.

The Conference itself has a long-standing tradition of inviting the Attorney General (or his or her representative) to its biannual meetings to address the Conference on matters of mutual interest to the judiciary and the Department of Justice. Similarly, the Chair and Ranking Members of the House and Senate Judiciary and Appropriations Committees, of the Financial

Services and General Government appropriations subcommittees, and of this subcommittee have also been invited to speak to the Conference on matters of interest to the judiciary that are pending in Congress. In recent years, the Conference has invited Chairman Goodlatte, Ranking Member Conyers, and you, Mr. Chairman, as well as Mr. Nadler and your Senate counterparts.

In a less formal setting, the Branch Committee often invites current and former Members of Congress to visit with us when we meet twice each year in Washington. Members are encouraged to give us their perspectives on current issues before them and their suggestions on how we can better communicate with each other. Our Committee members enjoy and value the low-key, off-the-record conversations that we have with Members during our meetings and would welcome any of you who would like to meet with us.

The Branch Committee, along with the Judicial Conference's Committee on the Budget, promotes and encourages interactions between judges and their Congressional delegations in their home districts. The Committees, as well as the Conference, recognize the importance of courts and judges getting to know their Congressional delegations and having an ongoing dialogue on issues of importance to each branch. Individual courts are encouraged to host events that involve their Congressional delegations. These activities include naturalization ceremonies, courthouse tours, civic education programs, lunches, and bench and bar meetings. Moreover, after an election, some courts have hosted "swearing in" re-enactment ceremonies (which do not replace the ones in Washington) for their local Congressional delegations, allowing newly elected Members of Congress to invite their constituents, families, and friends to celebrate their taking office.

It is our hope that these types of events will allow Members and judges alike to develop new or enhance existing relationships, allowing for frequent and frank conversations about issues of interest and ways to improve the efficient administration of justice.

The Judicial-Congressional Dialogue

In 2014, the Branch Committee, under the then-chairmanship of Judge Robert Katzmann, began a new program, that we call the Judicial-Congressional Dialogue. Our hope was to regularize interaction with the House and Senate Judiciary Committees, with the goal of increasing understanding between the legislative and judicial branches and appreciation for their respective roles. This program provides the opportunity for interaction between judges and Members of Congress in an informal, off-the-record, and non-agenda driven environment. Each event typically has a moderated discussion as well as a social component. We have thus far alternated between the House and the Senate Judiciary Committees for suggestions on topics and speakers of interest.

For example, on May 11, 2016, the Branch Committee – along with many of you – participated in the most recent Judicial-Congressional Dialogue. David Levi, Dean of Duke University School of Law, moderated a discussion entitled, "Reflections on Statutory Interpretation and Branch Relations," with Associate Justices Stephen Breyer and Samuel Alito. Chairman Goodlatte, as host of the event, made opening remarks.

At the December 2015 Dialogue, Chairman Grassley introduced noted historian and author, Professor Richard Norton Smith, who spoke with the group about "Why History Matters," highlighting the historical separation and balance of power between the legislative,

judicial, and executive branches. We look forward to continuing these events and expanding the scope of the programs and speakers to other issues of interest to both judges and Members.

We are fortunate to have the interest and support of the House and Senate Judiciary Committee leadership for these events. We are also fortunate for support from the Pew Charitable Trusts (Pew), our host for this program. Pew also hosts a similar program, which they call "Safe Spaces," within the Congress, so they have great experience upon which to draw to make these events interesting and successful.

Let me now address some of our efforts to enhance the public understanding, trust, and confidence in the judiciary.

Enhancing Public Understanding, Trust, and Confidence in the Judiciary

In recent years, the Branch Committee has rededicated itself to promoting efforts to strengthen the public's understanding of the judiciary. Former Justice Sandra O'Connor, a long-time proponent of civic education, said "Lack of knowledge leads to misunderstanding and mistrust. Knowing the processes and reasoning behind government actions can help people relate to those actions, even if they disagree with them." To this end, I would like to talk about several programs that we believe will improve current public understanding of the judiciary, as well as provide a basic understanding for future generations. We believe that these ways of interacting with the public serve both the judiciary and the public good and improve the efficient administration of justice now and into the future.

Civic Education

The need for civic education is routinely highlighted by numerous surveys that reflect the dearth of public knowledge about the government and, in particular, the judicial branch. In September 2015, the Annenberg Public Policy Center released a survey reporting that only 31 percent of Americans could name all three branches of government. The same survey found that 12 percent of those surveyed said the Bill of Rights includes the right to own a pet. Other studies have shown decreasing levels of public trust in each branch of the government.

One way to address the lack of knowledge about and trust in our government is through improved civic education. While civics may be taught in the schools, there is clearly still much basic information that the public does not understand about our government. The public's trust, that, for example, disputes can be fairly resolved in our courts, accused persons will be fairly treated, and victims' interests will be heard, is strengthened when it better understands how the judicial process works.

The judiciary feels so strongly that greater civic education will help improve the public's understanding of and trust in the courts that enhancing civic education is one of its primary strategic goals. Specifically, the judiciary seeks to improve the sharing and delivery of information about the judiciary, in part through facilitating the voluntary participation by judges and court staff in public outreach and education programs.

The Branch Committee encourages participation by judges (to the extent their schedules allow) in civic education activities and educational outreach programs. Many courts also regularly offer public tours of courthouses and provide classes and student groups the opportunity to observe courtroom proceedings.

The judiciary also uses annual observations, such as every September 17th, when Constitution Day and Citizenship Day commemorate both the signing of the U.S. Constitution and all those who are citizens by birth and naturalization, as opportunities for civic education. As part of a national initiative undertaken by the courts in partnership with civic education organizations, a growing number of courts – more than 50 in 2015 – hold naturalization ceremonies on that day. Many courts take the opportunity to involve students by, for example, having them lead the Pledge of Allegiance, read the Preamble to the Constitution, sing the national anthem, and welcome new citizens. Congressional delegations and other community leaders are also often invited to participate in these naturalization ceremonies. The ceremonies have been held at courthouses and at other iconic sites, including: the USS North Carolina in Wilmington, North Carolina; the Herbert Hoover National Historic Site in West Branch, Iowa; the Brown v. Board of Education National Historic Site in Topeka, Kansas; the Alamo in San Antonio, Texas; the USS Missouri Memorial in Honolulu, Hawaii; Thomas Jefferson's Poplar Forest home in Forest, Virginia; and the National Archives in Washington, D.C.

The judiciary also houses learning centers and educational exhibits in many courthouses, such as the Justice Anthony M. Kennedy Library and Learning Center in the Robert Matsui Federal Courthouse in Sacramento, California, and the Judicial Learning Center in my courthouse, the Thomas F. Eagleton Courthouse in St. Louis, Missouri. Learning centers, which may be established in cooperation with and continued support from the bar, are dedicated to promoting public understanding of the judiciary and the rule of law. The Judicial Learning Center in St. Louis, for example, hosts programs for the public including seminars on current topics in law, teacher institutes for social studies and civics teachers, and programs for Boy Scouts and Girl Scouts on citizenship and government, which I personally participate in on a

regular basis. Numerous courthouses also have exhibits about, for example, landmark cases that were heard in the courthouse and oral histories of judges who played historic roles.

In addition, the Administrative Office has developed educational activities that can be used by judges hosting students in their courtrooms. For example, one program, "You Be the Judge," is a simulated sentencing activity for district court judges to use with high school students. It lets students play the roles of federal judges, counsel, and jury members in courtrooms to experience what it is like to make sentencing decisions involving their own peers. Another program is a scenario on mediation and negotiation that lets participants learn to differentiate between positions and interests when working through a conflict and experience the use of alternative dispute resolution skills. We also have a program based on the fiftieth anniversary of *Miranda v. Arizona,* as well as similar programs based on other landmark Supreme Court decisions.

These and other programs and resources can be found on the federal judiciary's public website, www.uscourts.gov. The site serves as a resource for teachers, students, judges, lawyers, and civic education organizations to access teaching materials and other model programs. In addition to basic information about federal court operations and processes, jury service, bankruptcy, and naturalizations, uscourts.gov occupies a unique niche in civics education by updating landmark Supreme Court cases with contemporary hypotheticals for in-court simulations on First, Fourth, Fifth, and Sixth Amendment rights. Court simulation programs offer real-life experiences with judges and attorneys at federal courthouses, with students acting as plaintiffs, defendants, and jurors. In addition to Constitution Day and Citizenship Day, the website provides the public with information on other annual observations, such as Law Day (May 1) and Bill of Rights Day (December 15). The website provides additional specific

education activities and resources that provide classroom activities for teachers as well as links to constitutional resources.

The website also contains the *Pathways to the Bench* video series, which features individual judges speaking about challenges in their lives that prepared them to serve on the federal bench. Members of the public can submit their email addresses to be notified when new educational resources are added to the site. We have received positive feedback from teachers and students about the resources on this site and the courthouse programs. Every year a growing number of judges participate in local civic education programs in both the courthouse and in their communities.

A goal of many of the courtroom simulations is to simplify complex concepts, humanize the court, and motivate the participants, who are often high school students, to willingly serve, if they are called for jury service. A juror knowledgeable about our system of government and trusting in our institutions will help provide fair verdicts that are the hallmark of our independent judiciary. This is the very essence of the efficient administration of justice.

Jury Service

I believe that enhanced civic education is key to ensuring the public more fully understands the critical role of the federal courts in our democracy. Since many people never set foot inside a federal courthouse, they may not ever have the opportunity to develop an understanding of the process on their own. Often, their only interaction with the federal court system will be as jurors.

That is why my court and many other federal trial courts participate in civic education programs that are specifically aimed at young people --- future jurors. If they are called for jury service in their future, we hope that they will respond favorably to fulfilling their civic duty.

Not only is it important for jurors to have some understanding of the judicial process, it is also important that they have the best experience that they can so that we continue to have a jury pool that is representative of the community and that appreciates the importance of its duty. My court and many other courts periodically survey their jurors about their jury service in an effort to improve the use of jurors' time and maximize their satisfaction with their interaction with the judicial branch. The judiciary continues to develop tools that streamline and simplify the process for potential jurors to respond to qualification questionnaires and summons. We recognize the importance of making every effort to let jurors know that their time and service are valued.

Judges and Journalists

The judiciary has also worked for many years with the First Amendment Center[1] on "Judges and Journalists" programs to bring together judges and members of the media to improve news coverage of the judicial process and mutual understanding between the Third Branch and the media. The ultimate goal of these programs is to enhance public understanding of the judiciary.

Several Judges and Journalists programs have had a regional focus, involving local journalists, judges, and court administrators from a particular circuit or grouping of circuits to discuss issues of access and expectations as well as how to better inform news coverage of the

[1]The First Amendment Center is a non-profit media organization that works to preserve and protect First Amendment freedoms through information and education. It has offices in the John Seigenthaler Center at Vanderbilt University in Nashville, Tennessee, and at the Newseum in Washington, D.C.

courts. Other programs have focused on a specific topic (for example, one program was structured as a "New Media boot camp" to discuss non-traditional media coverage of the courts and other ways new technologies have changed court coverage).

In December 2015, a program was held at the Newseum with a focus on media coverage of state courts as well as the federal judiciary and involved two government public information officers and local and national reporters for a wide-ranging discussion on media coverage of the courts. I have had the privilege of attending several of these sessions and each time I leave with an improved understanding of the operations and pressures facing the news media. I believe that a regular dialogue between the Third Branch and the media ultimately benefits the public we both serve.

I have participated in these important programs and am aware how each has improved my understanding of and appreciation for the other branches of government, as well as the media. While we all share many characteristics, perhaps none is more important than our commitment to public service. It very well may be the public that is best served by our ongoing dialogues and educational efforts. I believe this is a worthy pursuit and I am pleased to be able to share with you today the federal judiciary's efforts in this area.

I would be happy to answer any questions that you may have. And again, thank you for inviting me to appear before you today.

Mr. DUFF. Thank you. One of the most distinctive features of our form of government is our independent judiciary, and its administration of justice. When judicial representatives from foreign countries and developing democracies visit our offices, they are usually familiar with the constitutional structure we have in the United States that provides for an independent judiciary, its provisions for life tenure for judges, and its prohibitions against any reduction of salary.

But, what has been very interesting to me is that our visitors are most interested in learning about the administrative office of the branch, and our Judicial Conference of the United States, and how these administrative structures both operate and help enable the branch to maintain its independence. I would like to address some of those features here today too, as they also demonstrate how we strive for efficiencies in administering the branch.

The judiciary is, of course, dependent on Congress for its funding, and we are very grateful that Congress has made us a funding priority in the past three budget cycles after sequestration. It is clear from our appropriators in Congress that we are recognized as careful stewards of public funds, and I would like to speak briefly as to how the judiciary is managing and being responsible stewards of those funds in its efficient administration of justice, and I focused on just three areas from my expanded written statement, which I also ask be submitted for the record.

Mr. ISSA. Without objection, so ordered.

Mr. DUFF. Thank you, Mr. Chairman. To summarize the three areas in my written statement very briefly—first, we have highlighted several case management practices that are implemented, both by the courts locally and at the national level, through coordinated programs that are structured in our Judicial Conference committees, and the Administrative Office of the U.S. Courts.

We encourage every court to employ the best practices we have gleaned from local courts. A prime example of this is, in fact, electronic filing in our Federal courts. This started in one court in the Northern District of Ohio, and now all Federal courts have it. I would point out that, by contrast, some State courts still do not have this service, and it saves significant funds for the taxpayers.

Second, we are effectively and efficiently managing public funds through workforce and resource management practices that include: the utilization of magistrate judges, inter and intra-circuit assignment of judges to courts with the heaviest caseloads, sharing administrative services among courts, and employing improved work measurement tools to determine our needs more accurately. Our senior judges, those who could retire, but have chosen to continue their service, are frankly keeping the branch afloat.

We are managing financial resources through a realistic budget formulation, and we have developed very strong working relationships with our appropriators and our work with them to find savings wherever possible, at every stage of the budget process, is paying great dividends. And, we have employed cost-containment initiatives for over 10 years now, even before sequestration, and those have enabled us, among other things, to bring down our rent projections, and our space and facilities needs down.

And, Chairman Goodlatte had mentioned our work with GSA and some of the issues we have had with GSA in the past. I am very pleased to report this morning that we have an improved service validation initiative with GSA that is getting good results, and I think can save us as much as $10 million annually, as we go through that program with GSA.

We have also utilized an aggressive auditing program that relies on independent, certified public accounting firms, as well as, our staff of auditors at the administrative office, to audit our financial systems, our programs, and operations that support the courts among many other audits.

All told, 205 separate audits were conducted in fiscal year 2015, and I would add that we respond routinely to GAO requests for studies, 12 such requests alone in 2014.

Third, we are working toward enhanced access to the judicial process, even during austere budgets. Our caseload statistics fluctuate over time, but the overall trend since the last comprehensive judgeship bill was enacted in 1990, has grown far faster than the number of judges that we have. Our ability to stay current in most courts is a testament to our increasing efficiencies, and the hard work of our judges and staff.

There are, however, some districts that simply cannot keep up with the enormous number of new cases and we, therefore, have asked the Congress to provide more judges in those districts with extraordinarily high caseloads, and to convert certain temporary judgeships to permanent status. We also asked Congress to please be mindful of the judiciary's needs when new legislation is passed that adds to the workloads of the courts, such as in sentencing, in criminal justice reform, and immigration reform.

Mr. Chairman, this is only a brief summary of my written testimony, which elaborates on these and other points, and I would be very pleased to answer any questions you may have about that, as well as, to address the issues you have raised in your opening statement this morning.

[The prepared statement of Mr. Duff follows:]

STATEMENT OF JAMES C. DUFF, ESQ.
DIRECTOR,
ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS
AND SECRETARY,
JUDICIAL CONFERENCE OF THE UNITED STATES

BEFORE THE SUBCOMMITTEE ON
COURTS, INTELLECTUAL PROPERTY, AND THE INTERNET
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

"THE JUDICIAL BRANCH AND THE EFFICIENT ADMINISTRATION OF JUSTICE"

June 23, 2016

Chairman Issa, Ranking Member Nadler, and members of the subcommittee – I am Jim Duff, Director of the Administrative Office of the U.S. Courts (AO) and Secretary of the Judicial Conference of the United States. I appreciate the invitation from Chairman Goodlatte to appear before you to discuss the Federal Judiciary. I am pleased to appear here today with the Honorable Rodney W. Sippel, Chief Judge of the United States District Court for the Eastern District of Missouri. Judge Sippel chairs the Judicial Conference Committee on the Judicial Branch.

As this subcommittee reviews the topic of "The Judicial Branch and the Efficient Administration of Justice," I assure you that the Federal Judiciary is devoted to and has been actively engaged in accomplishing that very objective. As the Third Branch performs its constitutional duties, we are focused on being good stewards of the resources Congress has provided, while also meeting the needs of the litigants and the public. To this end, the Judiciary has implemented a number of plans, policies, and procedures which shape the administration of justice.

This statement, provided for the record, outlines in greater detail the Judiciary's views on a number of topics. First, the judicial branch of our government is effectively accomplishing its constitutional mandate to resolve cases and controversies brought before the courts by sound management locally and by nationally coordinated best practices through its Judicial Conference and its committees. Second, the Judiciary is effectively and efficiently managing public resources provided through Congress by the taxpayers to accomplish its mandate. Third, the Judiciary is committed to and working towards enhanced access to the judicial process even in the midst of austere budgets.

I. Judicial Case Management

The day-to-day responsibility for judicial administration regarding the resolution of cases rests with each individual court, overseen by the chief judge of each court. This is no small task considering the workload of our courts. Last year, nearly 280,000 civil cases were filed in U.S. District Courts. Criminal cases against more than 80,000 defendants were filed. And more than 52,000 cases were filed in the U.S. Courts of Appeals. There are also 1.3 million cases pending in our bankruptcy courts. Additionally, the Judiciary's workload includes post-conviction supervision of 135,000 persons and providing pretrial services in 95,000 cases.

There is some fluctuation in cases filed from year to year. There has been a slight decline in recent years, but the long-range trends over the past 50 years show nearly a four-fold increase in civil case filings. Criminal cases commenced in that time frame have nearly doubled, and total pending cases are four and one-half times what they were 50 years ago. In contrast, the number of judgeships in that time frame has only doubled. Since the last comprehensive judgeship bill was enacted 25 years ago, total case filings have increased by nearly 30 percent. The fact that our judges and courts are meeting many of the challenges of increasing caseloads is a testament to the efficiencies in our court system. There is concern, however, about the workload in certain districts where the number of cases far exceeds the average for a district court judge as discussed herein.

Effective case management is essential to the delivery of justice, and most cases are handled in a manner that is both timely and deliberate. The Judiciary monitors several aspects of case management through its Judicial Conference committee structure and the AO. It has a number of mechanisms to identify and assist congested courts and courts with the heaviest caseloads. National coordination mechanisms also include the work of the Judicial Panel on

Multidistrict Litigation, which is authorized to transfer certain civil actions pending in different districts to a single district for coordinated or consolidated pretrial proceedings. The work of chief judges in managing each court's caseload is critical to the timely handling of cases, and these local efforts must be supported at both the circuit and national levels. Circuit judicial councils have the authority to issue necessary and appropriate orders for the effective and expeditious administration of justice, and the Judicial Conference is responsible for approving changes in policy for the administration of federal courts. Cooperative efforts with state courts have also proven helpful, including the sharing of information about related cases that are pending simultaneously in state and federal courts.

Challenges to the efficient administration of justice could arise, however, as more cases are brought into federal court. Looking ahead, we are concerned not only about a recent rise in pending cases, but also about the impact of new legislation on the workload and resource needs of the Judiciary. For example, sentencing and criminal justice reform legislation and immigration reform, legislation without provision for additional personnel and resources, would place significant additional responsibilities on the Judiciary. We ask that as Congress considers new legislation that it also considers the impact of new laws on the federal courts and the federal indigent defense system and ensures the Judiciary has the resources needed to address increased workload. As to some courts experiencing extraordinarily high and sustained workloads, we have sought assistance from Congress in creating 19 new judgeships in 11 districts and the conversion of three temporary judgeships to permanent status. Many of these courts are in immigration-impacted areas.

II. Judicial Resources Management

Regarding the effective and efficient management of public resources, sophisticated and proven resource management processes and controls are in place for all the resources provided to the Judiciary by Congress -- human resources, financial resources, and physical property resources.

A. Managing the Workforce

The strength of the Judiciary is dependent on dedicated individuals who serve as judicial officers, court staff, and in the Judiciary's support organizations. The Judiciary can meet future workload demands only if it can continue to attract, develop, and retain highly skilled and competent judges and staff.

The foundation of the efficient administration of justice in an independent Judiciary begins with its judges who are dedicated to a lifetime of service. Here again, judges manage the branch both at the local level and through nationally coordinated policies and practices through our Judicial Conference. It is critical that new judges, active judges, chief judges, senior judges, judges recalled to service, and retired judges are supported throughout their careers. The Judicial Conference and the AO, along with the Federal Judicial Center (FJC), are committed to programs and practices that support the education, training, development, retention, and morale of judges.

Similarly, the efficient use of judicial officers is critical to respond to a federal court workload that varies across districts and over time. A strategic goal of the Judiciary is to make more effective use of judges to relieve courts that are overburdened and congested. A number of programs are in place to increase the flexibility of the Judiciary in matching resources to workload. Examples include the effective utilization of magistrate judges, using visiting judges,

requesting and approving inter- and intra-circuit assignments of judges to cases, encouraging senior Article III judges to continue handling cases as long as they are willing and able to do so, and recall of judges who were appointed to fixed terms to serve after retirement. With regard to magistrate judges, the testimony of Judge David Keesler, which was submitted for the record for today's hearing, illustrates the substantial and important contribution of magistrate judges toward the efficient administration of justice and the assistance they provide to our district courts. In short, our magistrate judges enable the courts to stay current in their caseloads.

Recruiting, developing, and retaining a highly competent staff while determining the Judiciary's future work force requirements is also a high priority for the Judiciary. Delivering leadership, management, and human resources programs and services to help courts function efficiently is a key component of the Judiciary's strategic vision.

As we seek to attract, recruit, develop, and retain the most qualified people to serve the public in the Judiciary, we do so with an eye towards being good stewards of taxpayer dollars. An example of prudent management is the increasing use of shared administrative services among the courts of appeals, district courts, bankruptcy courts, and probation and pretrial services offices to reduce duplicative human resources, procurement, financial management, and information technology activities. Forty-eight percent of all courts have formal sharing arrangements of some kind, and many others have informal or temporary arrangements. The decision to migrate to a shared administrative services model is voluntary, and we are exploring ways in which we can continue to increase and incentivize shared administrative services.

We are also looking at organizational streamlining to control costs and increase efficiencies in the courts. For instance, we are exploring voluntary vertical and/or horizontal consolidation of district and bankruptcy court offices across districts, as well as other sharing

arrangements among the court units. Vertical consolidation is the combining of a district and bankruptcy clerks' offices into a single office. Horizontal consolidation combines operations of a district court's clerks' offices, within a multidistrict state, into one office or, similarly, bankruptcy clerks' offices within a multidistrict state. All consolidations are completely voluntary. The FJC is analyzing the impact of consolidated district and bankruptcy clerks of court offices through surveys and interviews with consolidated, and formerly consolidated, courts. In March 2016, the Judicial Conference approved a pilot project to evaluate the impact of horizontal sharing in the bankruptcy courts. We are currently seeking four to six districts to volunteer to participate in the pilot.

Another component of the efficient management of public resources, to ensure the Judiciary has appropriate staffing levels, is the Judiciary's work measurement program. This allows us to develop statistically-based staffing formulas. The staffing formulas estimate the number of non-chambers employees required to perform the work of the court units and federal defender organizations (FDOs). Work measurement applies to both administrative and operational staffing requirements across diverse functions such as probation and pretrial services offices, district and bankruptcy clerks' offices, circuit and appellate court offices, FDOs, and specialized functions such as bankruptcy administrators, and death penalty and pro se law clerks.

Although the Judiciary has used work measurement for several decades, current and foreseeable emphasis on cost-containment and reduction has focused increased attention on work measurement as one of the more effective tools available to the Judiciary to help emphasize objectivity in staffing requirements of court units and FDOs. From a cost-containment perspective, the enhanced work measurement procedures have worked extremely well. Since FY 2011, the Judiciary's data collection process and subsequent analysis have yielded a net

reduction of total staffing requirements by nearly 3,900 full-time equivalent (FTE) positions, which equates to 13.5 percent.

B. Managing Financial Resources

In addition to managing its human resources, the Judiciary is focused on managing effectively and efficiently its financial resources. With regard to our appropriations, we thank the Congress for treating the Judiciary as a funding priority in recent years. The government-wide sequestration cuts in 2013 had a significant impact on federal court operations. Post-sequestration, however, Congress essentially fully funded the Judiciary's budget request in fiscal years 2014, 2015, and 2016. This funding enabled the Judiciary to recover from the harmful effects of sequestration and allowed us, among other things, to: make investments in our probation and pretrial services program to reduce further recidivism and improve public safety; strengthen security at federal courthouses; pursue information technology initiatives to increase efficiencies, improve continuity of operations capabilities, and address cyber security needs; and provide for court and federal defender staffing and operations to meet workload needs. Given that the defense and non-defense discretionary spending caps place tight spending constraints on Congress, the Judiciary recognizes and appreciates the Congress' attention to making the Judiciary a funding priority. Accordingly, the Judiciary will continue to be good fiscal stewards, cutting costs where possible, spending each dollar wisely, and looking for long-term savings.

Sound financial resource management contributes to the efficient administration of justice. There are many aspects to financial management. Three areas where we are particularly focused are: realistic budget formulation; prudent budget execution; and sound fiscal controls and accountability mechanisms.

i. Budget Formulation

The Judiciary relies upon effective decision-making processes, within the Branch, governing the use of judicial resources, staff, facilities, and funds to ensure the best use of limited resources. Our budget process has demonstrated that the Judiciary has worked to contain the growth in Judiciary costs and match resources to workload.

One area of concern is the unanticipated expenses that are beyond those planned for in our budget process. We appreciate that Congress recognizes the uncontrollable nature of our workload and provides the resources needed to perform our current level of work. In considering the future of the Judiciary, we urge Congress to assess and consider fully the impact new legislative actions will have on the prospective workload and costs to be incurred by the federal courts. The official cost estimates prepared by the Congressional Budget Office (CBO) are a vital part of ensuring that resource impact information related to the legislative actions of the authorizing committees gets to the appropriating committees when they make their funding allocations.

From time to time, however, this information is lacking and CBO cost estimates fail to consider appropriately the significant potential workload and cost burdens imposed on the Judiciary by particular legislative proposals. Last year, I had a very cordial and productive meeting with Dr. Keith Hall, the new CBO Director, to discuss our concerns. We have developed a much more engaged effort to improve communication and data sharing between CBO and the Judiciary. This in turn will provide better support for Congressional decision-making and improve the overall legislative process, and ultimately, the efficient administration of justice. These efforts will be even more critical given the likely increasingly limited financial resources available to the federal government over the foreseeable future.

ii. Cost Containment

Another focus of our financial management program is careful budget execution. For more than 10 years, we have focused on containing costs in the Judiciary's budget and we have achieved significant success. Since the beginning of our formal cost-containment program in 2005, we have made changes that have reduced current and future costs for: rent; information technology; magistrate judges; compensation of court staff and law clerks; law books; probation and pretrial services supervision work; and other areas. These initiatives have helped the Judiciary operate and keep up with workload during periods of financial constraint. Cost-containment efforts have also helped the Judiciary demonstrate to Congress that it is an effective steward of public resources, and when it requests additional resources they are well justified. We have employed cost-containment with some sacrifices but without significantly harming Judiciary operations.

iii. Auditing

The third aspect of financial management that is a priority is the Judiciary's audit program. Audit results assist courts and the AO in evaluating and ensuring continued sound financial management practices and internal control processes. Recommendations and information obtained from the audits are used to mitigate the risk of financial misstatement; errors; and fraud, waste, and abuse.

As Director of the AO, I have the statutory responsibility to conduct audits of the courts. As detailed below, the AO's Office of Audit contracts with independent certified public accounting (CPA) firms to conduct audits that are performed consistent with the relevant auditing industry standards. For audits that do not require an independent CPA firm – generally those that do not include an independent auditor's opinion on financial statements – staff from

the AO's Office of Audit may conduct the audits. All audits are conducted in accordance with the American Institute of Certified Public Accountants (AICPA) Generally Accepted Auditing Standards and the Government Accountability Office (GAO) Generally Accepted Government Auditing Standards, the standards that apply to both financial and performance audits of governmental agencies.

Independent CPA firms under contract with the AO's Office of Audit conduct a number of different types of audits. Cyclical financial audits of court units and federal public defender organizations are conducted on a two and one-half year cycle for large and more complex organizations and a four-year cycle for smaller organizations. Audit reports include an auditor's opinion on financial statements for the clerks' offices. For all organizations, the audits report on internal controls and compliance with Judiciary policies and procedures.

The AO's Office of Audit contracts with independent CPA firms to conduct financial statement audits of AO financial systems, programs, or operations that support the courts. These audits include audits of Judiciary appropriations, court registry investment funds, and retirement trust funds for judges and their survivors. Other audits in this category include audits of national Judiciary operations and financial-related performance audits of national contracts or AO administrative functions.

In addition, independent CPA firms conduct annual financial and compliance audits of Criminal Justice Act (CJA) grants to the 18 community defender organizations (CDOs); audits of Chapter 7 and Chapter 13 bankruptcy trustees; and debtor audits of Chapter 7 and Chapter 13 bankruptcy filings by individuals.

The AO's Office of Audit also conducts financial-related performance audits to document the transfer of accountability when a court has a change in its clerk of court, or when

there is turnover in other Judiciary executive positions. Judiciary organizations may also request audits when there is a change in the financial administrator; to follow up on prior audit issues; or to examine a particular area or process.

In sum, during fiscal year 2015, 205 separate audits were completed. One hundred and fifty-four audits were completed during fiscal year 2014. For the first half of fiscal year 2016, 73 audits have been completed.

In addition to financial audits, the AO conducts program reviews and management assistance services of various types in court units and federal defender organizations. Reviews are intended to promote effectiveness, efficiency, and economy and cover both operational as well as administrative areas of court functions. Reviews of probation and pretrial services offices and federal defender organizations are conducted on a cyclical basis, while reviews of appellate, district, and bankruptcy clerks' offices and other court units are performed upon request.

The AO also offers assessments of administrative areas, including human resources and information technology. These assessments may be included as part of a program review or conducted as separate engagements by AO offices that have specific expertise and responsibility for the area to be assessed.

C. Management of Physical Resources – Space and Facilities

The third broad area of resource management is of our physical property, including space and facilities. As with our human and financial resources, the Judiciary has established policies to ensure that our property resources are properly managed and contribute to the efficient administration of justice.

Congress has recognized that, because of budget constraints, there are courts that for too long have been housed in aging facilities that have serious space, security, and operational deficiencies. Accordingly, Congress provided $948 million in lump-sum funding to the General Services Administration (GSA) in the Consolidated Appropriations Act of 2016 for the construction of courthouses. This much appreciated and needed appropriation will be used to build courthouses, or annexes in some locales, as prioritized by the current Federal Judiciary Courthouse Project Priorities (CPP) plan, formerly known as the Five-Year Courthouse Project Plan. It is our intention that by working together with the relevant courts and GSA this money will fully fund the top eight projects on the CPP: Nashville, Tennessee; Toledo, Ohio; Charlotte, North Carolina; Des Moines, Iowa; Greenville, South Carolina; Anniston, Alabama; Savannah, Georgia; and San Antonio, Texas. This money will also partially fund the ninth project on the plan in Harrisburg, Pennsylvania. The majority of these funded projects have been on the Judiciary's construction priority list for over 15 years.

The FY 2016 omnibus appropriations bill also provided $53 million to GSA for new construction and acquisition of federal buildings that jointly house U.S. courthouses and other federal agencies in Greenville, Mississippi and Rutland, Vermont. The Judiciary Capital Security Program received $20 million in funding for physical security enhancement projects such as Raleigh, North Carolina; Alexandria, Louisiana (design only); and St. Thomas, U.S. Virgin Islands.

In receiving this much-needed funding, the Judiciary recognizes its responsibilities. The Judicial Conference has implemented policies in the federal courthouse construction program to ensure that each project satisfies the housing needs of each court in the most cost-efficient manner possible. Furthermore, the individual courts, the AO, and the Judicial Conference, are

coordinating with GSA to manage these projects and spend appropriated funds in the most cost-effective manner.

i. Space/Rent Reduction

As in other areas, we have instituted cost-containment initiatives for our space and facilities over the past 10 years. The Judicial Conference reformed its space and facilities program to reduce costs, increase efficiencies, and prioritize requirements on the basis of urgency of need. Some of these changes were made to modernize our facility planning processes and take advantage of best practices in industry and government. As part of these changes, we responded to recommendations made by the Government Accountability Office (GAO) and incorporated guidance from Congress. The changes have provided cost savings and/or cost avoidance for all new courthouse construction needs for the Judiciary.

Examples include: implementing a new construction planning and management tool; adopting courtroom sharing policies; instituting a space reduction program, a "No Net New" policy whereby any increase in square footage within a circuit must be offset by an equivalent reduction identified within the same fiscal year; and designing the Integrated Workplace Initiative (IWI), a program to identify innovative management, technology, and space planning techniques; optimizing space utilization; and reducing rent costs.

The space reduction program will reduce our space footprint by 3 percent by the end of fiscal year 2018 – equal to a reduction goal of 870,305 square feet from the fiscal year 2013 baseline level of 29,010,183 square feet. The space reduction target is prorated among the 12 regional circuits nationwide to ensure space reduction is fair and equitable across the country. As of March 31, 2016, approximately 570,100 square feet have been vacated and removed from the Judiciary's rent bill which equates to a rent avoidance of $15.5 million annually. If all of the

projects currently under construction are completed as planned, we anticipate that we will achieve space reduction of 885,200 square feet, over 15,000 square feet above the original target.

ii. Service Validation Initiative

In tandem with the Judiciary's space reduction effort, our partnership with our landlord, GSA, has been strengthened by a Service Validation Initiative. We have evaluated and improved the services the Judiciary receives from GSA as a result. This initiative has resulted in policy changes in a number of areas: GSA's appraisal methodology/return on investment pricing methodology; overtime utilities estimating and energy savings sharing policies; space assignment; classification and rent validation; project management (scope, development, and estimating); and building management, service requests, and building operations. Groups comprised of subject matter experts from both the Judiciary and GSA have conducted extensive research in these areas and made recommendations in the form of policy and procedural changes, best practices, and new online tools to improve services that are currently being implemented. A national training program is underway to educate Judiciary and GSA executives on the new policies.

This partnership with GSA marks a fundamental shift in the relationship between the Judiciary and GSA at all levels. It is fostering an increase in trust, collaboration, and commitment to success that we hope will serve as a model for the federal government. After full implementation, we believe the Service Validation Initiative will achieve improved services and significant savings. Changes in how GSA sets rent charges for courtroom space, for example, could save as much as $10 million in annual rent costs.

D. Information Technology

Another facet of the management of our physical assets is in the area of information technology. The Judiciary is leveraging technology to make important improvements in the efficient administration of justice and to serve the public better. Of course, one concern for all institutions, public and private, as well as for other organizations and individuals, is the protection of systems and data, and our cyber security initiatives are a high priority for the Third Branch.

Some of the enterprises we are developing or have implemented in the information technology field include the Next Generation of Case Management/Electronic Case Files (CM/ECF) system, hosting services, a national videoconferencing service, and a national IT telephone program.

The Case Management/Electronic Case Files (CM/ECF) system is the Judiciary's comprehensive case management system for all bankruptcy, district, and appellate courts. CM/ECF allows courts to accept filings and provides access to filed documents online. CM/ECF gives access to case files by multiple parties, and offers expanded search and reporting capabilities. The system also offers the ability to update dockets immediately and download documents and print them directly from the court system.

Over the last several years, a number of technologies have matured to a point that makes centralized hosting services more efficient and reliable. These technologies include increased network capacity, server virtualization, and highly reliable and flexible server architectures. By investing in these technologies, the Judiciary eliminated some of its data centers and laid the foundation for further server consolidation. This in turn has reduced the Judiciary's costs for

telecommunications, hardware and software, and physical facilities and related staff, while enhancing the reliability and security of the Judiciary's data and systems.

Beginning in 2014, the Judiciary expanded centralized hosting services, in which servers supporting national applications are hosted in data centers rather than court locations, at the national level at no cost to the courts. This service provides the benefits of a more resource-efficient hosting solution for the Judiciary in addition to a better continuity-of-operations model in the event of a disaster. Progress to date has been achieved to establish the architecture to support cloud-based services and virtual desktop computers and to support implementation of some level of services in an increasing number of court units.

Many courts routinely use videoconferencing to conduct meetings with other government entities, training, law clerk interviews, and other official business. Until recently, courts purchased and maintained their own videoconferencing equipment and incurred significant costs for hardware, dedicated circuits, and maintenance. The Judiciary therefore established a national videoconferencing service that courts can use at their option. The national service is reducing videoconferencing costs by eliminating the need for redundant local connections and equipment. More significantly, videoconferencing enables the Judiciary and other federal agencies to avoid costs by reducing the time and expense of travel.

In 2011, the AO initiated a five-year deployment of a Judiciary-wide Voice over Internet Protocol (VoIP) telephone system that: (1) provided a cost-effective, technically superior communications solution for courts whose telecommunications systems had reached end of life; and (2) provided a communications infrastructure that supports Judiciary-wide applications, voice, and video. The centralized nature of the system also allows for timely enhancement and updates.

The initiatives described above to manage our physical resources balance the Judiciary's obligation to be good stewards of taxpayers' funds along with our duty under the Constitution to provide access to justice and ensure that cases are handled in a fair and expeditious manner.

III. Access to the Courts

The third general area of interest to the Judiciary in the efficient administration of justice addressed in this testimony is improving access to the courts. This involves not only those who come to the courthouse as participants -- parties, attorneys, witnesses, and jurors -- but also the public who have varied interests in the administration of justice. This includes news media, commentators, researchers, the academic community, and the public at large.

Access to the judicial process begins with having a sound judicial infrastructure. This includes the judges, court staff, space and facilities, and other resources to perform the core mission of the Judiciary. There are some judicial districts with extraordinarily high caseloads where the number of judges has not kept pace with the growing workload. As referenced previously, the Judicial Conference has requested the Congress consider a request for a limited number of judgeships to meet these high caseload districts. In addition, the Judicial Conference has requested the conversion of certain temporary judgeships to permanent status to avoid losing these judicial resources. In the meantime, the Judiciary is using all available tools to ensure that the workload requirements in all districts are being met.

In recent years Congress has included one-year extensions of authorizations for nine temporary district judgeships in the Judiciary's annual appropriations bill. Although we are grateful for these short-term extensions, including the nine district and seven bankruptcy temporary judgeships included in the House and Senate versions of the FY 2017 Financial

Services and General Government Appropriations Bill, H.R. 5485 and S. 3067, respectively, the conversion of certain temporary judgeships to permanent ones is needed.

Another aspect of enhancing access to the judicial process, and thereby improving the efficient administration of justice, is in court rules, processes and procedures. These rules must meet the needs of lawyers and litigants in the judicial process. Courts are obligated to be open and accessible to anyone who initiates or is drawn into federal litigation, including litigants, lawyers, jurors, and witnesses. The federal courts must consider carefully whether they are continuing to meet the litigation needs of court users.

As part of its commitment to the core value of equal justice, the Judiciary seeks to ensure that all who participate in federal court proceedings are treated with dignity and respect and understand the process. The Judiciary's national website and the websites of individual courts provide the public with information about the courts themselves, court rules, procedures and forms, judicial orders and decisions, schedules of court proceedings, and fees. Court dockets and case file documents are posted on the internet through a Judiciary-operated public access system. Court forms commonly used by the public have been rewritten in an effort to make them clearer and simpler to use, and court facilities are now designed to provide greater access to persons with disabilities. Some districts offer electronic tools to assist pro se filers in generating civil complaints. The Judicial Conference is working to enhance citizen participation in juries by improving the degree to which juries are representative of the communities in which they serve, reducing the burden of jury service, and improving juror utilization.

For example, 91 district courts are utilizing eJuror, a public portal that allows jurors to answer qualification questionnaires and provide summons information online. All remaining courts are expected to provide it this year. As of the end of 2015, 91 courts also were using the

Integrated Voice Response system, which lets jurors check the status of their service and obtain reporting instructions by phone. Additionally, to save courts time with juror check-in, a secure kiosk was developed so jurors can check in electronically upon reporting to the courthouse.

In addition, the Judiciary is working to make more interactive data available to the general public. The AO has traditionally posted statistical data on an annual and quarterly basis through static, published reports. Over the past decade, to expedite release of data and save money on the reproduction of reports, these statistical reports have been available in their traditional format directly from www.uscourts.gov in PDF format. In more recent years, the AO has begun making many of these data files available on the website in downloadable, Microsoft Excel format. Given that there are hundreds of tables available through the web, however, users require a lot of time and effort to access multiple tables across different reports. The AO is working on an initiative that will provide more seamless, dynamic access to the general public for the data available through our traditional reports and tables. The AO will continue to use a Microsoft Excel format in addition to using emerging analytics software (such as data visualization tools) to enable users to interact more easily and dynamically with our published data. This will allow both novice users as well as more advanced users the capability to explore or download data in a way in which users can build their own data tables or charts and graphs using our data. We anticipate that this will take time and effort, but it remains a high priority for the staff that has responsibility for our reporting and analysis.

To enhance both the relevancy and timeliness of our dataset for research purposes, and to increase transparency of our data to the general public, the AO is working closely with the FJC to: (1) provide more information in the dataset including docket numbers as well as plaintiff and defendant names in civil cases; and (2) post the dataset through links available on

www.uscourts.gov to enable users to access more readily the database without the lag time associated with ICPSR access. This will assist academics and others as they study the Judiciary.

A major focus of the Judiciary's effort to enhance public information and understanding of the administration of justice is providing access to court records. Through the implementation of the Public Access to Court Electronic Records (PACER) system, we offer an internet-based service that provides the courts, litigants, and public with access to court dockets, case reports, and over 1 billion documents filed with the courts through the Case Management/Electronic Case Files (CM/ECF) system. CM/ECF is an integral part of filing and case management, as well as for dissemination of data to the public. Therefore, Congress instructed that the support and enhancement of CM/ECF be funded from Electronic Public Access (EPA) fee collections. Currently, there are more than 2 million registered PACER users, of which approximately one-quarter of all user accounts are active in a given year.

Fee waivers and exemptions help achieve the Judiciary's policy objectives for public access, with more than 70 percent of all PACER users paying no fees at all. All PACER users are eligible to have their fees waived if their usage does not exceed a quarterly cap (currently $15 per quarter). In addition, every year, thousands of PACER users, including indigents, academic researchers, and CJA attorneys receive fee waivers from all charges.

Several other initiatives are intended to broaden public access, including a program to provide access to court opinions via the Government Printing Office's Federal Digital System; an Internet tool, RSS, to "push" notification of docket activity to the public free of charge; a new program, known as Debtor Electronic Bankruptcy Noticing (DeBN), specifically for debtors to receive court notices and orders electronically upon request; and the Multi-Court Voice Case

Information System (McVCIS) which provides free public access to bankruptcy case information in English and Spanish through an automated voice response system.

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Chairman Issa and Ranking Member Nadler, thank you again for the opportunity to appear today to discuss the Federal Judiciary and the efficient administration of justice. I would be happy to answer any questions the Subcommittee may have.

Mr. ISSA. Thank you, and since we have been joined by Congressman Franks, Mr. Franks, if you would like to—if you have questions, I will be glad to take yours first.

Mr. FRANKS. Thank you, Mr. Chairman, very much. Thank you, Mr. Duff, for being here. Mr. Duff, as you know, other branches of government have comprehensive disclosure and ethics rules, and I am wondering if you think the judiciary should also have disclosure and ethics rules for all judges, including those on the Supreme Court, and should there be reforms to impeachment standards, or should an inspector general be appointed for the judicial branch?

Mr. DUFF. Well, to answer them in order, we do have financial disclosure reports that are filed by——

Mr. FRANKS. These are financial disclosures, not general ethics, correct?

Mr. DUFF. Well, and we follow ethics standards certainly. We have codes of conduct within the branch, and we follow those, and they are modeled after similar codes and, with regard to——

Mr. FRANKS. I am sorry. I do not mean to interrupt you, but these are written?

Mr. DUFF. Yes, there are standards within the branch for conduct of judges, and we have a very robust system within the branch of overseeing and reviewing allegations of misconduct.

Mr. FRANKS. Do those apply to the Supreme Court?

Mr. DUFF. Pardon me?

Mr. FRANKS. Do those apply to the Supreme Court?

Mr. DUFF. No, sir. The Administrative Office of the Courts and the Judicial Conference of the United States only oversees and works with the Federal courts, not the Supreme Court. The Supreme Court has its own court administrator.

Mr. FRANKS. Yeah, own everything?

Mr. DUFF. Yes, and it is a constitutional court, unlike the—created in the Constitution. The Federal courts, by contrast, have been created by the Congress. So, there is that distinction and I should mention that I appear here today only on behalf of the Federal courts, the Federal court system, and not on behalf of the Supreme Court.

Mr. FRANKS. Not the Supreme Court.

Mr. DUFF. Yes, sir.

Mr. FRANKS. Okay. Well, then I will just move on here. What do you think the negative consequences, if any, have been to cameras in a limited number of the Federal courthouses?

Mr. DUFF. Well, we have had pilot programs, and we do permit cameras at the Court of Appeals. Only two such circuits are utilizing cameras now. The camera issue has been around for quite some time. We have very serious concerns in criminal trials. The ability to bring witnesses in to cases are affected by cameras; threats to individuals who appear as witnesses are very serious, and cameras publicize that and their images. There may be techniques to block that out, but they are not perfected.

We have had a pilot program for cameras in the courts in civil cases in recent years, and we had a study done by the Federal Judicial Center as to the benefits and detriments of it in the pilot program. That was considered by one of our Judicial Conference committees, and it was determined that there is not, at the current

date, an overwhelming or pressing need to televise all trials at the Federal court level.

Mr. FRANKS. Would it be fair to suggest that your assessment might be—what would be—and let me just ask what would be the net effect, do you think, on balance? Do you think it has been a positive or not?

Mr. DUFF. I think where they were utilized in the pilot program, there was no recognized positive effect. In fact, if you look at the statistics in the pilot program that we ran, the individuals who were the litigants in the case—each party was given the chance to determine whether they would prefer or have any objection to it being televised or not—and the overwhelming majority said that they did not want it televised. And so, it was a very small percentage of the participating courts in the pilot program that actually utilized cameras in the courtroom as a result. I would point out that there are distinctions between the branches, and among the branches, in this regard. Certainly, our trials are open to the public. Anyone can go into the courtroom and attend. So, they are not closed in that sense.

The determination as to whether or not they should be televised is a different question, and there are different aspects of this that apply to the branches. The general public has no vote in the cases before a court. The courts are there to serve the litigants, and the parties, and to resolve conflicts.

And so, there are different aspects of, perhaps, the need for televised hearings, unlike, by contrast, in Congress and your Committee hearings and this Committee hearing today. The public has every right and interest, and a vote in many, if not most, of the issues that appear before your Committees.

So, there are some distinctions in the branches that I think need to be recognized as we consider the question, and we are all for public access, and the Chairman has raised a couple of issues I know we will address further this morning about the ability to access information from the courts, in our opinions.

Just as an aside, I would point out that our PACER system that the Chairman referred to, our PACER system and the costs involved in our PACER organization within the courts—that was a determination, and you mentioned 10 cents a page for getting transcripts and so forth. The opinions of the courts on PACER are free.

Seventy percent of the users in the PACER system do so for free. The costs involved to the courts are passed on to the users, and most of them are institutional users that have to pay for access in PACER. Those costs are passed on because the Congress wanted us to do that, frankly. We were going to have to incur increased expenses in our budget when we went to Congress about providing information on PACER to the public. And, the Congress decided, and I think wisely so, that those costs should be passed on to users who can afford the costs, and they are not extraordinary costs, and those who cannot afford it should have access for free.

So, there is a user fee associated with PACER, but that was at the direction of Congress, so that we did not have to seek more money in our budget. We were going to have to pay for it somehow.

Mr. FRANKS. Yeah. Well, thank you, Mr. Duff. I wish to thank the Chairman. Thank you for being so gracious here.

Mr. ISSA. Thank you, Mr. Franks. We now go to the gentleman from Ohio, Mr. Chabot, for his questions.

Mr. CHABOT. Thank you very much. Thank you for being here, Mr. Duff.

Mr. DUFF. Thank you.

Mr. CHABOT. Sorry I was not here in time to hear your testimony. We have got various hearings going on at different rooms around here. I would like to follow up, I think, along the lines that my colleague, Mr. Franks, asked, and it is relative to cameras in the courtroom. Do you know what the number is; how many States actually allow cameras within the court rooms?

Mr. DUFF. I am sorry, I do not know off the top of my head, but we can get that.

Mr. CHABOT. Okay. Would you agree that it started out pretty small, and has now grown to most of the States?

Mr. DUFF. Yes, and I am sure that is right.

Mr. CHABOT. Okay. What makes the Federal level different? Why should we not learn from the experience that the States have had in this, and had they had a lot of problems, it would seem that that trend would not have continued where they have opened up the courtrooms to the public.

Mr. DUFF. I think that there has been some genuine hesitation to open up, and certainly in criminal cases, open up Federal courts to cameras. There are a lot of concerns about how the trials are conducted and the impact that they have on witnesses and——

Mr. CHABOT. Well, let me stop you there if I can. We will put the criminal part aside for a moment then. But, at the present time, in the overwhelming majority of the Federal courtrooms across the Nation, you are not allowing cameras in the civil cases either. Is that correct?

Mr. DUFF. That is at the district court level. Yes, sir. But at the appellate court level, there is a provision that would permit cameras.

Mr. CHABOT. All right. Would you agree that probably to most of the public, the actual trial itself would be more interesting for the public to see what is going on in the courtrooms that they, after all, pay for than at the Federal level where, you know—it tends to be a bunch of lawyers talking to each other about fairly obscure legal issues most of the time, if it please the court. So, would it not be more interesting to most people, probably at the trial level, to begin with?

Mr. DUFF. Are you speaking of criminal trials or civil trials?

Mr. CHABOT. Let's stay with the civil for the time being, yeah.

Mr. DUFF. Well, as I mentioned at the outset, any individual can go to any court in the country and attend a trial if they want.

Mr. CHABOT. Right. Well, let me ask you about that. Obviously, you have got people that, you know, that work; support their families; take care of their families; are doing what it takes to live in our society nowadays. Should we not make it more accessible to the public, more convenient to them, so that if they want to watch—if it is a court TV channel or whatever they want to watch, you know, should we not leave that up to the public to make it easier for them?

Mr. DUFF. Well, there are advantages and disadvantages, and I think the Federal court system, we are considering this. We have been looking at it and we have done a pilot program in it. We just have not felt that at this time that there is an overwhelming need or interest in doing it. I think the viewership in civil trials, frankly, is not a compelling reason to televise civil trials. There is a concern that it changes behavior. It changes behavior in the courtroom. It changes the behavior of the judges and the lawyers.

Mr. CHABOT. Well, I know that was a concern. It was a concern at the State level that it would change the behavior. Maybe it changes it for the better, for that matter, but most of the studies that I have seen indicates that it really does not change behavior significantly. I mean, they said the same thing—and I know we are different branches of the government—but they said that about C-SPAN years ago, and that happened prior to me getting here about 20 years ago.

And, in general, we just take it for granted now. There are cameras there and, if you do not want to be embarrassed, do not do anything embarrassing in front of the cameras. And, I think most of the legislation that I have seen, and, to be open and honest, that I have introduced in the past to allow cameras in the courtroom, we would leave it up to the Federal judge and the parties to determine if they want cameras in the courtroom or not. If a judge does not want it in the courtroom, then do not have it.

And, there are judges that do think that we should do this, although it is obviously not unanimous. Maybe it is not even the majority, but it would seem to me that if the judge thinks that it is okay and that he can keep control, just as we have these cameras here, you know, and the parties themselves do not have any opposition—it just seems to me that since the public pays for this and they pay your salary and my salary, that they ought to have access.

I am sure that you have heard the expression about sunshine being the best disinfectant, and I am not saying that there is anything going on wrong in the courtrooms, but it would just seem the public ought to have access to those things.

So, we talked about civil and, as far as I am concerned, the same thing would apply to criminal cases, insomuch as if you have got a case—let's say, you know, it is organized crime or it is some sort of situation where witnesses do need to have their identities protected and, of course, the judge could at the very beginning of the case could decide, "This is the kind of case we do not want to have that, so no cameras on this case." That would be fine.

But Jerry Nadler, who was, you know, a Democrat still on—I believe he is still on this Committee. I know he is on the Judiciary Committee. Yeah, there you are. Mr. Nadler over there, he and I worked on an amendment that—he was concerned about that; that obscured the identity of witnesses to make sure that they were protected.

So, I just think that virtually any roadblock that is thrown up to say, "No, we cannot have cameras," can be reasonably dealt with, and I think we ought to do it. So, I hope you will reconsider, but I am guessing you probably will not.

Mr. DUFF. No, actually we have had the pilot program. The Ninth Circuit is continuing the pilot in the courts there that participated in it. We are going to continue to take a look at the issue. We have some concerns. I think there are some distinctions in the branches that I pointed out a little earlier, as to the purpose of trials and the public's interest certainly is very important, but the trials and the courts are there to serve the litigants. And, it is a little different than issues on which the public at large have a vote, and so there are different considerations.

We are looking at the State court systems and where they are successful. Our pilot program, though, was instructive in this way. When given the choice to have cameras in the case or not, the vast majority—and I will get the statistic for you—said no, that they did not want them there. And, we are trying to resolve conflicts between two parties in the court system, and that is a little different dynamic, frankly.

And, while they are open to the public generally, I agree that it is not open to every citizen because they cannot come to one individual court and get in and see the case. But, we are trying to find the right balance. We are going to continue to look at it. It is an important issue, and we are studying it within the court system.

I will share something with you anecdotally, though, about the success or issues, and I know you have already committed, and I am friends with C-SPAN, so I admire what they have done for the public. But, I was at dinner one evening with Senator Howard Baker, for whom I worked for a number of years, and someone asked him if he had anything to do over again "when you were Majority Leader of the Senate, what would it be?" And, he said, "I would"—without hesitation he said, "I would never have allowed cameras in the Senate." And——

Mr. CHABOT. Can I ask you what year that was?

Mr. DUFF. This was 2000.

Mr. ISSA. You can refuse to answer if it is incriminating.

Mr. DUFF. Let's see, he passed away 2 or 3 years—a couple of years ago, so it has been within the last 5 or 10 years. But, you know, there are advantages and disadvantages——

Mr. CHABOT. Speeches are not as good over in the Senate as they are in the House anyway so——

Mr. DUFF. Well, his point was, and this is the point I would raise, and we are having a good, healthy discussion about this. And, I am glad we are having this, because we want to have this conversation with you, and the more communication about it, the better.

But, I think that Senator Baker's point was it changed the behavior of the members, because they used to get work done on the floor of the Senate. It was a buzz of activity, and now today you go into the Senate and, with apologies to C-SPAN, there is one individual member speaking to a camera and it is empty, for the most part. This was his point. I am paraphrasing his issue with it.

And so, he was not convinced it was a positive that the proceedings in the Senate are now televised on balance because he thought they got more work done when there were not cameras on the floor.

So, the point I would make about that is cameras do change behavior. I mean, I am not as comfortable here today, frankly, because there is a camera, but I welcome it, because I have nothing to hide, as you say, about sunshine. But when it comes to trials and cases involving litigants' interests, there is a different element that we have to take a careful look at, and what our purpose is in the judicial branch, and it differs slightly than the other two branches, is all I would add to that.

And so, I hope that you all could appreciate that aspect of it. We are not trying to hide anything. We are just trying to provide the best form of justice in the world to our citizens.

Mr. CHABOT. Mr. Chairman, do I have time to make a follow-up?

Mr. ISSA. Absolutely.

Mr. CHABOT. Yeah. And, I think that is the reason I think we in the legislative branch are trying to be as understanding and accommodating as possible by saying we will leave it up to the judges to decide whether or not, in that particular case, they will allow cameras or not; or if they do not want them at all, that is fine. So, that is about as accommodating as I think this branch could get to that branch.

And, the final thing I would note is a full disclosure, when I was Chairman of the Constitution Subcommittee of this Judiciary Committee for 6 years, shortly after our new Chief Justice was sworn in, Justice Roberts, I met with him over in his office over there, and we discussed this and a lot of other issues, but this one in particular with great gusto. And, I did not win that argument. So, in any event, I hope someday we will. Thank you.

Mr. DUFF. Thank you, Congressman Chabot, and I want to mention I was just home last weekend for a 45th high school reunion and came into Cincinnati. I am from Hamilton originally, but——

Mr. CHABOT. Hamilton High School.

Mr. DUFF. Hamilton Taft.

Mr. CHABOT. Oh, very good. Yeah, excellent. I am a La Salle Lancer, a proud La Salle Lancer which, since this is on camera, I will mention won the State Championship, Football State Champion; the last 2 years in a row; La Salle Lancers. "Lancers roll deep," is what they say so——

Mr. DUFF. I wanted to give you that opportunity.

Mr. CHABOT. I appreciate that. Thank you very much. I am still not changing my opinion on cameras.

Mr. DUFF. We will work on it. Thank you.

Mr. ISSA. Recognizing myself as a Clevelander, there is a lot to be said about, you know, the camaraderie of southern Ohioans, the people who go to Kentucky to go to their airport.

Mr. DUFF. Well, I will say that when I grew up in southern Ohio, we did not have the Bengals, so I was a Browns fan growing up. So——

Mr. ISSA. I was too until they went to Baltimore. Moving right along, you know, we have had a lot of discussion about cameras, but I want to close the camera discussion with two—hopefully, only two points. One is repeatedly you said we serve the litigants.

Mr. DUFF. Yes, sir.

Mr. ISSA. Would it be fair to say you serve the American people and, particularly, when you are dealing with criminal cases you

really represent, if someone is guilty, the victims, and if someone is innocent, then justice for the innocent?

Mr. DUFF. Yes.

Mr. ISSA. Which goes well outside the courtroom, does it not?

Mr. DUFF. It goes beyond those participants, certainly.

Mr. ISSA. So leaving civil cases, which are a big part of your caseload aside.

Mr. DUFF. Right.

Mr. ISSA. I want to touch on just one area, and like my brother and former—I am a former Ohioan, he is an Ohioan—but I have had that time with Chief Justice Roberts, and he is still as resolute as ever. But, I am going to appeal to something today that goes beyond that.

Justice, when someone has committed a crime; justice, when someone goes up on appeal, is best served when the greatest amount of information is available to the victims, their families, and, of course, if appropriate, to the appellate court. And, I might suggest that there is an in between, if you will, cameras/no cameras.

When someone proffers or, you know, admits their guilt—I am saying it wrong, but I do that once in a while—or when they are, in fact, going through the process of the jury coming back, finding them guilty, and going through the sentencing—two distinct phases—these events are often—many of the family attend, some of the friends; but, in fact, they are not captured in perpetuity.

And, when 20 or 30 or 40 years later, someone who is on death row is saying, "But, I was not that bad," those moments are lost forever, and the family or the police officer or a lawyer comes in and tries to explain to a parole board those terrible grievous, you know, events. I might suggest that the cases and the outcomes drive a lot of the question of, "Is there a reason to capture it?"

I am from Southern California, and we have had video depositions as a mandate. You cannot get out of them under the local rules, and that has changed, I am sure, how people answer questions. But, it has also captured in a way that is usable as evidence.

So, I might suggest that, as you go back and begin working with, not just the Chief Justice, who we have talked about here, but with all the judges, and ask the question of, should we not, at the soonest possible date, enhance the tools that remain in perpetuity for that 20, 30 years later when someone is, you know, trying to say, you know, "I did not really kill him," so to speak.

And, that value of those cases, and we are talking strictly criminal at this point; and the value, in some cases, for an appellate where somebody has said something and the visual is very powerful. So, I might suggest that there is some middle ground, just as the court was kind enough to work on the pilot in the ninth circuit, that we do not yet know what the value of capturing those certain aspects might be, and I have had the luxury of talking to a number of Federal judges around the country who have sort of brought that up—that they would love to have the tool to use when they would love to have the tool to use. You are nodding your head yes and we are capturing that on video so, I am hoping that is a good sign.

Mr. DUFF. I thank you, Mr. Chairman. We will certainly continue to take a look at this issue. It is of importance to not only the

branch but to the American public, and we are stewards of their funds and, you are right. Everyone has an interest in the outcome of cases in some fashion.

Mr. ISSA. I want to touch on just one thing that I want your input on. It is clear that social media is now affecting jurors in a way that it did not just a small part of a generation ago. How do you see the court being able to handle that, and are there additional tools necessary to keep a jury from being tainted under the circumstances of the proliferation of social media?

Mr. DUFF. It is challenging. You have to be vigilant about it, and I do not know how it can be monitored entirely successfully. There have been issues that have arisen. I think, for the most part, we are doing a good job.

Mr. ISSA. But you still have iPhones for lunch, so to speak.

Mr. DUFF. Exactly, and so it is a challenge to us. We have to stay on top of it to preserve the integrity of the jury system, and we certainly are committed to doing that.

Mr. ISSA. Well, and my follow up on that is jury pools are becoming more demanding.

Mr. DUFF. Yes.

Mr. ISSA. They are becoming demanding, both at the State and Federal. And, when you look at the makeup of these pools, disproportionately retirees, disproportionately government workers—do we have—at the Federal level—do you have the tools you need to get a jury of people's peers, or are you getting a subset of this jury of people's peers? Maybe fair and impartial, but certainly not the same cross-section of society as it would be if it were 100 percent at random?

Mr. DUFF. Well, we are working on making certain that we do have the cross-section. We have added, and this goes to a point you made in your opening statement with regard to access and transparency. We have made it easier, we think, for jurors to be selected and chosen through our e-juror system. There are electronic mechanisms now to make that whole process work more smoothly. Can we do better? Sure, and we will work toward that. But, you are right. The challenges are greater today because of social media.

Mr. ISSA. The income you receive from that 10 cents a page—from our looking, there is very little transparency as to where the money goes in excess of the operating costs. Do you want to go through, just for people watching here today, I think, how you feel that it is appropriate not to have those funds come back to the Congress for appropriations but, rather, be in funds controlled by your branch?

Mr. DUFF. Well, the funds are intended to be put to use to improve the access to opinions and court records. And so, it is rolled back into the costs that we incur for improving systems to make these available to the public. And, we have certainly talked with our appropriators about it, and we will continue to do so.

Mr. ISSA. Can you assure us today that all funds are used within that system, and that no funds are diverted to more general information? In other words, it is not printing pamphlets about how great the court is. It is strictly providing access to this information that, in fact, you are charging 10 cents a page for?

Mr. DUFF. Yes, sir. That is what we intend to use the funds for, is to support that system. And, you know, there are tangential issues that come up that we think are appropriate for the funds to be used for, but they all really focus around access to the information.

Mr. ISSA. Now, there are a couple of more that are also perennial issues, and I want to go through them quickly. We mentioned in opening statements that we have had judges who, under the Constitution, had committed impeachable offenses.

As you know, impeachment is lengthy, laborious and, as you also mentioned, we cannot take away a judge's salary while he or she sits and says, "Nah, nah, nah. It will take you a long time to get rid of me, by which time I will be on disability or retired." Do you have any proposals for any kind of a faster administrative remedy for clear and convincing misconduct, other than a constitutional change or an expedited impeachment?

Mr. DUFF. Well, let me——

Mr. ISSA. And, this is just recognizing that judges are human beings, and out of any set of human beings, no matter how well chosen, some will be awful.

Mr. DUFF. Let me address, I think, a very good and serious issue you have raised, with regard to conduct matters that come to our attention that are short of impeachable offenses, although some that have come to our attention we have referred to the Congress for impeachment proceedings. And, thankfully they are rare, but they happen.

Mr. ISSA. Judges normally resign if they have done wrong, is one of the reasons that we have had so few in our history

Mr. DUFF. I think that that speaks well to the review process we have, and you mentioned the time it takes, and we do want to—I would welcome meeting with you to elaborate on this even more with the Chairman of our Conduct and Disability Committee, Judge Scirica, and would welcome the opportunity to walk you through it, sort of a typical conduct review, some of which I am restrained from speaking about publicly because there are confidentiality requirements built into the statutes that give us authority to investigate allegations of misconduct, and we are not permitted to reveal publicly some of the aspects of that.

But just speaking generically about that process, I think it is a very healthy and robust and thorough process that we have within the branch. And, I think it was Chairman Goodlatte who raised the matter in Alabama, where the judge did resign. From beginning to end in that particular matter, that took 1 year. And, you might say, "Well, why did it take that long?" Well, in that case, from the time the allegations surfaced——

Mr. ISSA. The timeline of 1 year, that is the timeline of the investigation, not the timeline from beating his wife to removal, is it?

Mr. DUFF. I think——

Mr. ISSA. That was slightly longer.

Mr. DUFF. I believe it was when it became public that he was arrested and then that was the issue, to the time of resignation was about a year. And, in the course of that, there was a thorough investigation. There were witness statements taken, and throughout—the process—if I can be brief about it and summarize it—from

the time a conduct complaint was filed, misconduct complaint was filed with the chief judge of the circuit, the chief judge of the circuit then brought it to the attention of the Judicial Council of that circuit, the Judicial Council of the circuit. Then there was created a special committee to review the matter within the circuit.

The special committee reviewed it, made its recommendations to the Judicial Council of that circuit. Those judges then, and the chief judge of that circuit, made a recommendation to the conduct or to the Judicial Conference of the United States, which then referred it to its Conduct and Disability Committee, and it reviewed the matter. And then it, at that time, referred the matter to the full Judicial Conference of the United States. All in all, 54 judges were involved in the review of that conduct allegation. It ultimately resulted in the resignation of the judge. That took a year.

Mr. ISSA. And, we verified. You are exactly right. It did take a year, so thank you for clarifying that. One quick follow-up on that, and then I think Mr. Cohen is going to ask a round of questions.

Mr. DUFF. Sure.

Mr. ISSA. The Constitution does not allow us to reduce the pay of a judge. But there is, as far as my reading, no prohibition on an ultimate reduction for someone terminated for cause. Effectively, if we passed a statute that required that, once someone went into an "investigation," that if that investigation led to their resignation or their dismissal through any number of procedures, including impeachment, that their retirement date would cease as of the date of the beginning of that crime or misconduct.

In your opinion, would you say that that is not a diminishment or, if it was, we could certainly define retirement in a way that it would not be? And, I shared that with a number of judges, because one of our challenges has been individuals who choose to say, "I am going to be vested or vested at a higher level," and they simply delay the tactic and that often leads to judges saying, "Well, why go through this, if he or she is going to be gone in 18 months?" That is a tool not presently available to you.

Can you opine on whether you think that would be constitutional, or whether you would need a statute, and then still a constitutional challenge to, I guess, eight men and women?

Mr. DUFF. I would like to study it a little more before—and I am not sure it is proper for me to speak to the constitutionality of it—but I would be very interested in working and talking with you about it.

Mr. ISSA. And, we are going to go to Mr. Cohen, but I wanted to leave that public, because it would seem that it is a tool not available to you today. It would seem that the retirement system, different than the current pay, may well be one in which we could define that, ultimately, that, you know, we normally—we can suspend an employee, potentially without pay, in the executive branch.

In Congress, we passed the statute after Randy Duke Cunningham, essentially, took bribes, that would make it possible to eliminate their retirement altogether for that crime, which he pled to. So, it is not that we are not doing it to ourselves. We are doing it to ourselves, but we lack such a tool currently. So, if you would study it, I would be happy to work with you, and at some future hearing, perhaps, bring it up again.

Mr. DUFF. I would be very happy to do so, Mr. Chairman.

Mr. ISSA. Thank you. Well, and now we have the gentleman who represents Saint Jude and other important areas of Tennessee for his questions, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chair, and, indeed, I am proud to represent Saint Jude and the Ninth District in Tennessee. The Ninth District of Tennessee has a district court judge that is pending in the United States Senate. President Obama nominated the present United States Attorney, Ed Stanton III, who has an impeccable record of an outstanding job as a United States Attorney, formerly a counsel with Federal Express, and in private practice as well, and an esteemed graduate of the University of Memphis Law School and an undergraduate. He is next on the list.

Do you have any insight into what the Senate's rationale is, and what they will do, as far as having more nominations come to a vote than have been approved by the Senate Judiciary Committee and are pending the final vote in the Senate?

Do you have any idea what their present perspective is? Are they limiting themselves by the number of people that were approved during Bush's last year, or are they trying to help the Federal courts get judges who can then make the flow of cases proceed?

Mr. DUFF. I do not know, Congressman Cohen, what their intent is from here, through the election. We continue to encourage and press for the vacancies that exist to be filled. And, there are some nominations pending and we want the vacancies filled.

Mr. COHEN. There are 90, as I understand, vacancies with 59 nominees pending. Some have been there for more than a year. I think Mr. Stanton has been there, obviously, the longest time, I think, because he is next in line. How has the lack of filling these vacancies affected the workload of the current judges and Federal district courts?

Mr. DUFF. Well, vacancies have been with us for a long, long time. And, it is an issue that we work on with every Administration regardless of party. And, we push for getting those vacancies filled as best we can. This is not a new issue for us.

Our workload, as I mentioned, that we are really beholden to, our senior judges for helping us absorb increased workload. If you look at the trends in the Federal courts over the last 50 years, the workload has gone up probably four-fold for the courts. And yet, we only have twice the number of judges that we had 50 years ago.

Mr. COHEN. But let me ask you this, the administration of justice is being harmed by not passing and approving judges who have been approved by the Committee? Would that be an accurate statement?

Mr. DUFF. Well, we do want the vacancies filled. Yes, sir.

Mr. COHEN. Okay. And, let me ask you this—at one point, I think the rationale was that X amount of judges were approved in the last year of President Bush II and that—I think they have gone beyond it by one or two now. Do you know what the caseload vacancy was at that time? Or not the caseload vacancy, but the judicial vacancies? There are 90 vacancies now, do you know how many vacancies there were at that time?

Mr. DUFF. Off the top of my head, I do not, Mr. Cohen.

Mr. COHEN. But, I believe there were a lot less. So, I think that is a better way to look at it is the harm to the judicial system and not just a raw number. And, I think it is an error. And, of course I would like him to approve Mr. Stanton and at least do one more. The issue has come up about television in the courtrooms.

Mr. DUFF. Yes, sir.

Mr. COHEN. And, as I understand it, you all have a pilot program, but you are not so much in favor of it. And, did you take a position, you did not think that should exist at the Supreme Court level?

Mr. DUFF. Well, our pilot program really has nothing to do with the Supreme Court, we are——

Mr. COHEN. Well, I understand that, but did you take a position on the Supreme Court and cameras?

Mr. DUFF. No, sir.

Mr. COHEN. Okay.

Mr. DUFF. The Supreme Court makes its own decisions about that.

Mr. ISSA. I might note for the record that Chief Justice Roberts has not changed his adamant opposition.

Mr. COHEN. And, I have great respect for Chief Justice Roberts. I have had the opportunity to have interchanges with him on several occasions, I respect him greatly, but I think he is flat wrong on this issue. I can see people being against it, thinking that in certain places that some lawyers might use it to, you know, act and maybe increase their client base, et cetera.

But, I do not think that is going to happen at the Supreme Court. The government body, the three equal branches, they are not three equal branches. There is one big branch, and it is the Supreme Court. They make more of a difference in this country than the executive or the legislative, in my opinion. They decided Bush v. Gore, they decided Citizens United, they have got choice, they have got the Second Amendment, they have got—all the big issues are there, and they do it.

And, the American public should be able to see the arguments, listen to the arguments, and see the responses and see the questioning. I have only been up there once. It was an edifying experience, and every American should have it, and you should not have to go over there and sit there and to watch it, it should be on C-SPAN. I have no more time, so I will yield back the balance.

Mr. ISSA. I thank the gentleman. Do you need more time?

Mr. COHEN. No.

Mr. ISSA. Okay. Mr. Duff, I want to not get you out of here without thanking you and all of those who work with you for the fact that the cost of courtrooms is high, the building security is high, and in the now 15 plus years since 9/11, a lot of demands have been placed on those building funds.

And, I want to make it clear that the dozen or so billion dollars, which in Washington—everywhere else is a lot of money—in Washington it is amazing that the courtroom security, everything, and I recently dealt with one related to just getting the babysitting—if you will—into the Federal building in San Diego because, in fact, the place we had, which was secured, was being taken back by the city. And, there was a basic problem of, these are high targets and

how do you transport people who are targets between dropping off their child in one place and another?

And, I think the American public does not fully appreciate the actual security requirements that you deal with every day. So, as a result, I am not spending a lot of time talking about your building funds, your construction, because I think that you—between the appropriators in this Committee—have been great and transparent.

But, speaking of transparency, everyone up here on the dais fills out—and everyone in the executive branch at certain levels—fills out an incredibly detailed, but confusing, form for financial disclosure. And, it does not happen the same way in judicial branch.

And, I want to know from you, can you find and give us any guidance as to why we should not mandate, if we cannot get voluntarily from the court, a similar level of transparency for the question of possible conflicts of interest? We understand that a judge's job is to say, "Oh, I have this conflict, I own, you know, eight million shares of something belonging to somebody who is a litigant."

But, in fact, money flowing in and out is not necessarily that transparent sometime. And, I will take one example in my question from the public. I do not know who paid for trips by various justices and judges on a regular basis because it is not disclosed with the kind of transparency we have. And, my understanding is, there is much less limitation on who can pay for and have somebody be their guest speaker at a first class resort. So, would you touch on that? Because people pretty much understand the President's disclosure—even candidates' disclosures of their tax returns. They certainly can go online and see the outcome of our extensive requirement to provide information, not only as to our financial well-being, but disclosing every single individual stock trade within a very short period of time, for example.

Mr. DUFF. Well, our judges do fill out financial disclosure reports as much as you do. There is a provision that permits when someone has sought access to the financial and wants to review the financial disclosure report, there is a period of time at which we alert the judge to that. So, there is an opportunity to review it, once again, for information that could be redacted that would put the judge in jeopardy or his family in jeopardy by disclosing certain locations——

Mr. ISSA. But in a nutshell, they file a financial report that is not public. If someone wants to review it, there is another round available to the judge prior to someone being able to see it and those redactions, in good faith, might be appropriate, but that is not the same as a Member of Congress buys 1,000 shares of Google today, it has to be reported.

Mr. DUFF. Right. Well, those things are reported again, in the annual disclosure reports. I think the redaction period is only about a 30-day period. And, it was really implemented for security reasons for the judges. We have had more than one incident of judges and/or family members being killed. And so, we just have to——

Mr. ISSA. No, we understand the addresses, although our addresses are very public. But, one more follow-up on this to make it clear—if Judicial Watch asked for every single judges' financial disclosures, so that the financial holdings in some range were

available, 30 days from now, would they be able to publish those on the internet so that everyone would know——

Mr. DUFF. I believe they do. I will check into that, but I believe they probably already do that. I think those are well-publicized. It may well be Judicial Watch who does that, but I would like to follow up on that if I might, Mr. Chairman, just so I am accurate about that.

Mr. ISSA. Here is the last one—and this one I have voiced before the Judicial Conference once—we have a problem in Marshall and Tyler, Texas. Judges, by any stretch of the imagination, are abusing discretion to keep patent cases in vast numbers there. They do not transfer them, and they will not prioritize the motions to move them to a more appropriate venue, but rather, they go through discovery.

It is good for Tyler, it is good for Marshall, it is good for the Chamber of Commerce, and your Federal judges are doing it. Not on an individual basis, but on a group basis. It has been going on for a decade; it is a growth industry. I am currently being asked to provide more judges to that district.

Now, it will be a cold day in hell before I give more judges, at my authority to the extent that I have it, in any way shape or form, to an area that is abusing discretion and causing legislation—Chairman's legislation—vastly bipartisan, the Ranking Member and others'—looking at legislation to try to stem misconduct within a district.

So, my question for you today—and this was the question I have asked the Chief Justice and late Justice Scalia and others—if you have the power to do administrative—you can move cases, you can, in fact, speak to your brethren—and you have not been able to handle this—then why is it that it should be our problem and not your problem to fix it?

Mr. DUFF. Well, you and I have had this conversation before, too. And——

Mr. ISSA. I got to tell you, I talk to everybody, because it is frustrating that Congress should even be looking at one district for its misconduct.

Mr. DUFF. Well, if I may——

Mr. ISSA. And, misconduct is a word maybe misused, but the growth of these cases and the other judges around the country rolling their eyes about Tyler and Marshall in the Eastern District of Texas, it is not a—it is the most open secret there is on your side of government.

Mr. DUFF. Well, if I might speak to it in a general sense, what the Judicial Conference through its rules committee has done most recently in this realm that may have some impact on it, although it may not address entirely concerns you have raised.

But, we have tried to streamline litigation, make it more efficient with regard to motions, for example, the discovery periods, bringing those into certain bounds and limitations that move cases along more quickly and make it more—the consideration of motions to be moved along more quickly than they have been.

Similarly, we eliminated some of the forms in the rules, the Civil Rules amendments in 2015. One of the forms eliminated was Form 18, which was a form that was used for patent filings. And, it was

deemed to be no longer valuable and useful and perhaps did not give all the proper elements of a patent claim in the form itself. So, that form was abrogated. And so, we are taking a look at this, and the FJC is studying patent litigation and potential reforms.

I think your institution and encouragement of the Patent Pilot Program—there are elements in the Patent Pilot Program that I think we can glean information from that may well help us address this more specific issue that you have raised today. And so, our 5-year report is due, as you know, because you—this was—you were——

Mr. ISSA. You are doing a great job of sucking up to the Chairman here. But, you know, the fact is that Patent Pilot was designed to recognize that judges could, in fact, move caseloads better; that we want judges that are knowledgeable.

The challenge that we face today—and I am going to go to Mr. Johnson—but we also know that we want cases to be held—you know, we want them to either be where the plaintiff clearly has a logical nexus, the inventors, the et cetera; or where the defendant has a primary place of business. And, that is just a general rule, that when all there is, is a doughnut shop that is using a product by a manufacturer and it is in Tyler, Texas; that is not where the plaintiff or defendant is; not where the invention is; it is not where the witnesses are.

And, it is frustrating because I have as you note—look, I have been both the plaintiff and the defendant in these cases, and I know how burdensome it is to move people to a completely inappropriate place. It is always burdensome to have it in the other guy's place, but if it is going to be the other guy's place, at least I want it to be appropriate other guy's place.

I appreciate your kindness and your working on it. We will continue to monitor it. It happens to be important to the Chairman of the full Committee and the Ranking Members, so I will keep bringing it up.

Mr. DUFF. Sure. And, I do think the 5 year report that is due may address some of these issues, and we would hope to work with you on that.

Mr. ISSA. And, I would note that there has been some progress on the caseloads reduction and transfer. So, it is not without some upside. Mr. Johnson, are you ready? The gentleman is recognized for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman, and thank you, the Ranking Member, as well. And, this is a very important hearing. And, I thank the witness for appearing. As the senior Member of the House Judiciary Committee, I have long championed the issues of access to the courts for all citizens, not just the wealthy and the well-connected. Specifically, I have worked to ensure that every American has the opportunity to assert his or her right—a constitutional right under the Seventh Amendment—to a trial by jury.

Over the last 15 years, we have witnessed repeated attacks against our judicial system; the courthouse doors have been shuttered, or threatened to be shuttered by legislative maneuvering, and highly politicized Supreme Court cases.

Indeed, very limited funding, significant legislative reforms, paradoxical pleading standards created under Twombly and Iqbal,

an aging bench, and anti-litigation legislation here in Congress, makes me wonder how capable our venerated judicial system is at administering justice in the face of all these hurdles.

In the 11th circuit alone, we have 11 vacancies, four future vacancies, and seven judicial emergencies. Furthermore, prosecutors and public defenders, at the State and Federal level, are facing significant funding cuts. To avoid layoffs, public defenders find themselves working unpaid cases, facing delayed compensation, or enduring furloughs. Advances to court technology have also taken a back seat, despite the fact that such measures are needed to make the courts more accessible.

While this is in response to tightening budgets and sequestration, it has a corrosive effect of increasing court backlog and discouraging citizens from seeking redress through the courts. Rather than making the process more streamlined for the public, Americans face higher litigation costs, a confusing process, and longer wait times between proceedings.

Instead of reaching a speedy resolution, citizens find themselves frustrated and disheartened by the legal system. And, I am glad that we have an opportunity today to hear how Congress can support the courts, give rights back to the people, and ensure everyone has the opportunity to have their proverbial day in court.

Mr. Duff, while the Senate has grown famous for its stalling tactics in this year's SCOTUS nomination, they also have a historically low confirmation rate for all Federal nominations—only 11 in 2015. How does this appalling low confirmation rate, combined with an aging bench throughout the Federal judiciary, affect the court's ability to administer justice? And, I think closely associated with that, is the rate of pay that we give to judges. I mean, they make less than a first-year associate at a major law firm, these days. Can you comment about that?

Mr. DUFF. Well, you have raised a number of issues, and I will try to address them in order—and maybe reverse order, because I will remember them more easily, then. And, I want to thank you for your efforts in years past for our judges and the salary issue. You were a leader on that for us, and it was very much appreciated in the branch.

With regard to vacancies, across Administrations, we have pressed for filling the vacancies where they exist. We need our judges to help us with the workload. You referred to, also, our aging bench. I would reiterate something we discussed a little bit earlier, which was our senior judges are the reason why we are keeping up with the workload to the extent that we are.

We have a number of judges who are serving, who could retire and draw their salaries in retirement; as you know with the life appointment that is possible for our Federal judges. But many, if not most, stay on the bench even after they are eligible to retire. And, that has been an enormous service to the country and to the judicial branch.

But, you have raised other challenges that we do wrestle with. I want to mention that after sequestration we have been very—I hesitate to use the word "favorably," but certainly given very healthy budgets in the last three cycles. They are enabling us to pay defenders now where through sequestration we—that we had

to make cuts. We are very grateful to the Congress for the appropriations we have been given over the last 3 years. And, I think that is a reflection of recognition that we have been good stewards of public funds. And, if I might correct the Chair on something—I hesitate to do that, but——

Mr. ISSA. Oh, please, feel free.

Mr. DUFF. Well, I would love to have a $12 billion budget, but ours is $7 billion. And, it may be that you were referring to courthouse construction projects and others that GSA gets funding for.

Mr. ISSA. I was lumping all of it in. You know, some if it goes to those underpaid Federal judges.

Mr. DUFF. But, we have been given healthier budgets in the last three cycles because, I think, our appropriators have recognized that we are efficient, which was the topic of this—of the hearing, the efficient administration of justice.

And, we are grateful for that. Could we use more resources? Sure. Do we need the judges filled? Yes. The vacancies. Do we need more judgeships? And, we have focused on areas where there is an extraordinarily high caseload, and we have asked for more judgeships in some key districts around the country where the caseload is overwhelming to our judges.

But, if I could speak to what the branch is doing to handle that within the branch, we are utilizing inter-circuit assignments of judges and intra-circuit assignment of judges to move judges whose workload may not be as heavy in some districts into courts where the workload is overwhelming.

And so, we are trying to manage within the branch without getting more funding from Congress, and more judges, frankly. We are trying to manage within the branch the increasing workload. And, we do not have as many judges, workload-wise, as we did 50 years ago. If you look at the case trends and the growth in the cases in the Federal courts and the number of judges has not kept pace with that.

But, we have become more efficient, and I am very proud of our judges and the staff for the hard work that they have put in around the country. But, you have raised serious issues and questions; they are ones that we take to our appropriators as we go through our budget process.

Many of these issues are—you know, money does not solve everything, but there are areas where it is needed. We have asked for more, and the Congress has been responsive, for the most part. So, we are encouraged about that part of it. But, there are other elements that you have raised that we have a long way to go yet.

Mr. JOHNSON. Well, the issue of judicial pay, if you would get a little bit further into that. Tell us what the lay of the land is in terms of judicial pay; how it incentivizes or disincentivizes good public service.

Mr. DUFF. Well, our pay has been adjusted. The cost of living increases, that were denied over the past years, have been reinstated. And so, adjustments have been made that have made up for the lost cost of living adjustments.

And so, the pay issue that you and I worked so hard on a few years back has been alleviated to a great degree. But, it is certainly an issue, I think, for public servants, generally. The rate of pay,

your salaries, are, I think, frankly, in need of review. And so, that is an issue that thankfully within the branch, because of the make-up on the lost COLAs, has been relieved somewhat.

But it is important—as we have talked in years past—it is a very important incentive to get people into public service. People do not devote their careers to this to get wealthy, obviously. They are devoted public servants and they want to serve the country.

But, to attract the best, you have to be at least competitive with, you know, the cost of living in an area of the country, certainly here and in major cities, that you can attract good people to the service. So, it is a very important element of public service, and I think it deserves consideration. It is not a time, of course, when that is going to get a lot of sympathy.

I think the Chairman alluded in his opening remarks about the views of the public about our public service, generally, and the low regard the polls would indicate. We have got work to do to persuade the public that we are serving them well, and then we can look at the pay issue again, I think. But, not until.

Mr. JOHNSON. Thank you. I want to thank the Chair for being quite judicious with the—or more than judicious with the time for my questions. Thank you.

Mr. ISSA. The gentleman's questions were very appropriate. I thank the gentleman. In closing, I will recite from my prepared notes: "$13.29 billion is the budget, much of it not discretionary."

Obviously, you have pay, you have retirements in that. About less than half of it goes to the court operations as you would oversee it. And, I bring it up, actually, because it is so small. You are a very small branch of government, the total amount that is allocated, considering there is 320 million Americans, is small.

And, I am going to close with a comment, but it is one that I want to make sure that is on the record: the growth of the use of the Federal court system, far beyond what it was ever intended to adjudicate, is part of the reason that we, today, spend a considerable amount of time talking about Federal judges; and the 90 or so vacancies, 31 not referred yet to the Senate, but the remainder who pend before the Senate.

If we took every gun case, every car theft case, every civil suit that could be in State court, what we would discover is, the vast majority of that—other than immigration—considered by the court—and I am leaving bankruptcy and the specialties out—would in fact, not be there.

As someone who has watched patent cases be put behind endless amounts of criminal cases, all of which are illegal in every State in the Union for crimes committed in a single State, what we discover is that we, in Congress, have, in fact, given you a growth opportunity that we have not fully funded, and are unwilling to fully fund.

So, I might suggest, in closing, that a future hearing by this Committee, and a series of looks that go along with Chairman Sensenbrenner's view, that we need to take a close look at why we federalize that which the States could do, while we ask our Federal judges to spend a great deal of their time reliving their time as D.A.s and State judges, rather than focusing on immigration, patent, true interstate activity, and other areas that would only be

possible to be tried in the Federal courts. That is sort of my talking point close.

At this point, I would like to thank our witness for his very lengthy discussion, it has been very helpful. This does conclude today's hearing. But, without objection, all Members, both present and not present, will have 5 legislative days to provide additional written material, and, with the indulgence of our witness, provide additional questions and follow-ups that you may be able to answer.

Mr. DUFF. Happy to, Mr. Chairman.

Mr. ISSA. I thank you. And, with that, we stand adjourned.

[Whereupon, at 11:32 a.m., the Subcommittee was adjourned subject to the call of the Chair.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Response to Questions for the Record from James C. Duff, Director, Administrative Office of the United States Courts

ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6216
(202) 225–3951
http://www.house.gov/judiciary

July 25, 2016

Mr. James C. Duff
Director
Administrative Office of the United States Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, NE, Suite 7-110
Washington, DC 20544

Dear Mr. Duff,

The Committee on the Judiciary's Subcommittee on Courts, Intellectual Property, and the Internet held a hearing on "The Judicial Branch and the Efficient Administration of Justice" on Wednesday, July 6, 2016 in room 2237 of the Rayburn House Office Building. Thank you for your testimony.

Questions for the record have been submitted to the Committee within five legislative days of the hearing. The questions addressed to you are attached. We will appreciate a full and complete response as they will be included in the official hearing record.

Please submit your written answers to the Subcommittee by Monday, August 22, 2016. Please send them via email or postal mail to the Committee on the Judiciary, Attention: Eric Bagwell, 6310 O'Neill Federal Building, Washington, DC, 20515. If you have any further questions or concerns, please contact Eric Bagwell on my staff at (202)-225-5741 or by email: Eric.Bagwell@mail.house.gov.

Thank you again for your participation in the hearing.

Sincerely,

Bob Goodlatte

Bob Goodlatte
Chairman

Enclosure

Questions for the record from Representative Ted Deutch (FL-21)

Question 1:

The present structure of having the federal defender system in the judiciary gives federal judges immense authority to review and determine the reasonableness of costs in specific cases; select private attorneys to be assigned to represent criminal defendants in front of them; approve staffing in federal defender offices; select federal defenders to head offices; manage the budget for the entire federal defender system; and create policies and procedures that impact the operations of the federal defender system.

In June 2015, Chief Justice John Roberts appointed an Ad Hoc Committee – also referred to as the "Cardone Committee" – to conduct a thorough review of the Criminal Justice Act (CJA) to evaluate the structure of the federal defender system. The Committee is chaired by US District Court Judge for the Western District of Texas Kathleen Cardone. Also, US Court of Appeals Court Judge Edward Prado is serving on the Committee. Judge Prado led a similar review of the Criminal Justice Act in 1993 which called for greater independence of the federal defender system from the judiciary.

Since beginning its review, the Committee has held numerous public field hearings around the country and received thousands of pages of written testimony. The Committee is presently completing its fact-finding and putting together their report and recommendations for release in the spring of 2017.

Will the Administrative Office of the Judicial Conference make available to Congress the complete report and any recommendations that are produced by the Cardone Committee? Will the report and recommendations be made available to the public?

Question 2:

As the Cardone Committee completes its work for the Judiciary, will you support greater independence for the defense function?

Question 3:

Would you agree that an independent defense function is essential for protecting constitutional rights and that the defense function is not primarily a service to the judiciary like clerks and probation officers? Moving forward, how will you help ensure that the defense function remains free of judicial interference?

Question 4:

On June 3, 2016, the National Association of Criminal Defense Lawyers (NACDL) submitted written testimony to the Cardone Committee. In the written testimony, NACDL describes having "heard new accounts of inexplicable and arbitrary voucher cutting, including efforts to recoup compensation, even without any suggestion that the compensation requested, authorized, and paid was improper or inaccurate." These reports are extremely troubling. Are these reports true?

Question 5:

Recently, judges in the Western District of North Carolina dissolved a Community Defender Organization in favor of a Federal Defender Office because the judges were unhappy with the selection of the head of the office. I also understand that the Federal Defenders from around the country were opposed to the change and viewed the move as interfering with the independence of the office. What is your position on judges having the authority to choose the head of a federal defender office?

Question 6:

Testimony submitted to the Cardone Committee has revealed that in many districts the use of outside services, including investigators and experts, by CJA panel members is less than 5 percent. What is your position on judges deciding whether CJA panel members are allowed to hire investigators or experts? In your view, is the low rate of CJA panel members using investigators or experts a problem?

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

JAMES C. DUFF
Director

WASHINGTON, D.C. 20544

August 22, 2016

Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for inviting me to testify before your Committee's Subcommittee on Courts, Intellectual Property, and the Internet on July 6, 2016, regarding *The Judicial Branch and the Efficient Administration of Justice*. I am providing the following responses to the six hearing questions forwarded to me in your letter of July 25, 2016 (enclosed).

Question 1:

The Judicial Conference of the United States is the policy-making body for the federal judiciary. By statute, the Chief Justice of the United States presides over the Judicial Conference. The Director of the Administrative Office of the U.S. Courts serves as Secretary to the Judicial Conference.

Judicial Conference policy supports a periodic, comprehensive, and impartial review of the Criminal Justice Act program.[1] Accordingly, the Chief Justice appointed a Committee to Review the Criminal Justice Act Program ("Review Committee"), chaired by Judge Kathleen Cardone from the United States District Court for the Western District of Texas.

The Review Committee held seven public hearings in the last year and is currently evaluating a wide range of issues related to the administration and operation of the Criminal Justice Act, under which representation is provided for defendants who are

[1] JCUS-MAR 93, p. 28.

financially unable to retain counsel in federal criminal proceedings. The Review Committee is scheduled to complete its report in April 2017 and will submit it to the Judicial Conference for review. Typically, committee reports to the Conference are available to the public upon request after the Conference meets. The Judicial Conference may then report to Congress and take other action as it deems appropriate.

Question 2:

Among the issues included in the scope of the Review Committee's study is a review of "the national structure and administration of the defender services program under the CJA,"[2] and the Committee may report to the Judicial Conference with suggested reforms. In 1993, the Judicial Conference rejected a recommendation of the Prado Committee to create an independent "Center for Criminal Defense Services" within the Judicial Branch.[3] Based on insights gained in the intervening years, the Judicial Conference will carefully consider the current Review Committee's suggestions on this and any other subject.

Question 3:

I agree that the constitutional right to counsel requires independent legal representation and the functions of defense counsel differ from functions of clerks and probation officers. The Review Committee currently is evaluating a wide range of issues related to improving representation for defendants who are financially unable to retain counsel in federal criminal proceedings, including "the impact of judicial involvement in the selection and compensation of federal public defenders and the independence of federal defender organizations" and "judicial involvement in the appointment, compensation, and management of panel attorneys and investigators, experts, and other service providers."[4] The Judicial Conference will carefully consider the Review Committee's findings and recommendations.

Question 4:

Pursuant to 18 U.S.C. § 3006A, the review and approval of vouchers for panel attorneys appointed under the Criminal Justice Act is the responsibility of the courts themselves, not of the Administrative Office of the U.S. Courts. I have no information regarding the particular allegations in Question 4, but I am aware that this has been expressed as a recurring concern for panel attorneys. Generally, Judicial Conference policy provides, "Courts should be discouraged from peremptorily reducing fees to panel

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[2] Review Committee's Scope of CJA Review, 13 (enclosed).
[3] JCUS-MAR 93, p. 24.
[4] Scope of CJA Review, 1 and 3.

attorneys and should strive to create a system that ensures fair compensation to such attorneys."[5] Judges also are advised "not to delay or reduce vouchers for the purpose of diminishing Defender Services program costs."[6]

Question 5:

The Criminal Justice Act ("CJA") requires each judicial district to develop a plan consistent with the Sixth Amendment's mandate of right to adequate and competent representation regardless of the defendant's financial ability to retain counsel. The CJA allows districts with at least 200 defendants requiring representation in a single year to establish either a Federal Public Defender Office (FPDO) or a Community Defender Office (CDO).[7] The choice of FPDO or CDO is documented in a district's CJA plan and can be modified with the approval of the judicial council of the circuit.[8] Through the CJA, Congress also established that the authority to appoint a Federal Public Defender in districts with an FPDO rests with the court of appeals of the circuit.[9]

In April 2015, the Western District of North Carolina Board of Judges approved a change in the district's CJA plan to transition from a CDO to an FPDO and the Judicial Council of the Fourth Circuit approved the district's modified CJA plan in November 2015. The Western District of North Carolina District Court judges believe an FPDO will best meet the right to counsel needs of the district by improving recruitment of staff attorneys and prefer the FPDO model which employs the Judiciary's accounting and fiscal controls and applies standard conflict of interest policies for all federal public defender employees.

The CJA Review Committee is currently studying "the national structure and administration of the defender services program under the CJA,"[10] and may make recommendations to the Judicial Conference regarding this and other issues.

Question 6:

Congress addressed this issue in 18 U.S.C. § 3006A(e) and provided a process for the provision of services other than counsel, including experts, for persons who are financially unable to obtain them. The Review Committee is currently studying "[j]udicial involvement in the appointment of, compensation, and management of panel

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[5] JCUS-SEP 95, p. 60.
[6] JCUS-MAR 06, p. 16.
[7] *See* 18 U.S.C. § 3006A(g)(1).
[8] *See id.* § 3006A(a).
[9] *See id.* § 3006A(g).
[10] Scope of CJA Review, 13.

attorneys and investigators, experts, and other service providers."[11] The Committee may make recommendations to the Judicial Conference regarding these issues, which the Conference will carefully consider.

Conclusion

If we may be of further assistance to you in this or any other matter, please do not hesitate to contact me or the Office of Legislative Affairs, Administrative Office of the United States Courts, at 202-502-1700.

Sincerely,

James C. Duff
Director

Enclosures

cc: Honorable John Conyers, Jr.

[11] *Id.*, 3.

Scope of CJA Review

Judicial Conference policy supports a periodic, comprehensive, and impartial review of the CJA program. (JCUS-MAR 93, p. 28) Consistent with the first such review completed in 1993, this review should include the following issues:

(1) The impact of judicial involvement in the selection and compensation of federal public defenders and the independence of federal defender organizations (federal public defenders and community defenders);

(2) Equal employment and diversity efforts in the federal defender organizations;

(3) Judicial involvement in the appointment, compensation, and management of panel attorneys and investigators, experts, and other service providers;

(4) The adequacy of compensation for legal services provided under the CJA, including maximum amounts of compensation and parity of resources in relation to the prosecution;

(5) The adequacy and fairness of the billing, voucher review, and approval processes relating to compensation for legal and expert services provided under the CJA;

(6) The quality of representation under the CJA;

(7) The adequacy of support provided by the Defender Services Office to federal defender organizations and panel attorneys;

(8) The adequacy of representation of panel attorneys on matters stemming from CJA representations, such as contempt, sanctions, ineffective assistance of counsel, and malpractice claims;

(9) The availability of qualified counsel, including for large, multidefendant cases;

(10) The timeliness of appointment of counsel;

(11) The provision of services or funds to financially eligible arrested but unconvicted persons for noncustodial transportation and subsistence expenses, (including food and lodging) prior to, during, and after a judicial proceeding;

(12) The availability of reliable data to evaluate the overall cost and effectiveness of the federal defender program;

(13) An examination of the national structure and administration of the defender services program under the CJA; and

(14) The availability and effectiveness of training services provided to federal defenders and panel attorneys.

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